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Who Ya Gonna Call? An Analysis of Paradigm Shifts and Social Harms As a Result of Hyper-Viral Police Violence

Ariana H. Aboulafia

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Who Ya Gonna Call? An Analysis Of Paradigm Shifts And Social Harms As A Result Of Hyper-Viral Police Violence.

Ariana H. Aboulafia *

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“I fear white men in police uniforms; white teenagers driving by in a car with Jersey plates; thin, panicky, middle-aged white men on the subway. Most of all, I fear that their path and my husband’s path will cross one night as he makes his way home . . . When white people are ruled by their fears of everything black, every black woman is an addict, a whore; every black man is a rapist – even a murderer.”

— Rosemary Bray (1990)¹

“It is impossible to be unarmed when your blackness is the weapon that they fear.”

— The Hate U Give (2018)²

¹ Rosemary L. Bray, *A Wife Waits Fearfully for a Reassuring Key-Rattle*, Chicago Tribune (July 1, 1990), <https://www.chicagotribune.com/news/ct-xpm-1990-07-01-9002230439-story.html>.

² THE HATE U GIVE (Temple Hill Productions & State Street Pictures 2018).

I. INTRODUCTION

Alton Stirling. Eric Garner. Philando Castile. Tamir Rice. Michael Brown.

These are but some of the more well-known individuals who have been killed by police in recent years. They are, of course, far from the only victims of police brutality – indeed, according to an article in *The Atlantic*, 1,146 people lost their lives to police violence in 2015, while an additional 1,092 lost their lives in 2016.³ This means that, according to a study published in the *Journal of Epidemiology and Community Health* which took into account the ages and races for each person killed by police in 2015 and 2016, and then compared them to the average life expectancy for those groups, together the individuals killed by police violence lost a total of 57,375 years of their lives in 2015.⁴ A total of 54,754 years were lost to police violence in 2016 – and, in both of these years, a disproportionate percentage of the individuals killed were black men.⁵ The above metric is merely one (perhaps controversial) way to measure the true toll that police violence has taken, and continues to take, on American society. However, the seemingly-continuous, perpetually violent, and widely-publicized killings of minorities – referred to throughout this paper as “hyper-viral police violence” – has caused much more than the tragic loss of life for victims, and their families. Rather, it has caused and will continue to cause social harm, in the form of paradigm shifts in who calls the police, who does not, and why.

This note asserts that there are two major paradigm shifts that have either occurred or have been exacerbated by the proliferation of hyper-viral police violence: simply, that good-faith individuals are calling the police less often, and those acting in bad-faith are calling the police more often. The behavior of good-faith actors will be discussed in Section II, which will first analyze the ways in which hyper-viral police violence has exacerbated an already sub-optimal relationship between minorities (particularly black men, but also including black women and other minorities) and police, leading members of these populations to call police less often. That same section will then analyze how this phenomenon of reduced trust in and reliance on police has spilled over and spread through non-black-male and non-minority communities, leading good-faith, informed individuals of all races to fail to call the police, even when they

³ Olga Khazan, *In One Year, 57,375 Years of Life Were Lost to Police Violence*, *The Atlantic* (May 8, 2018), <https://www.theatlantic.com/health/archive/2018/05/the-57375-years-of-life-lost-to-police-violence/559835/>.

⁴ Anthony L. Bui et. al., *Years of Life Lost Due to Encounters with Law Enforcement in the USA, 2015-2016*, *J. EPIDEMIOL COMMUNITY HEALTH* (May 7, 2018), <https://jech.bmj.com/content/early/2018/04/17/jech-2017-210059.info>.

⁵ *Id.*

ostensibly *should* be doing so. Section III will then shift to a discussion of bad-faith individuals – those who wish to exploit the racist motives and outcomes of police violence – and assert that, in the face of hyper-viral police violence, these populations are actually calling the police *more often* with the hope that, as a result of their often-frivolous call, an innocent minority individual will become a victim. These paradigm shifts are striking and vital, not only because they are so widespread (and can occur without any firsthand experiences with police) but also because of the chilling effect that they have on law enforcement, which will also be examined in Section IV. In short, it goes without saying that policing in the United States is far from perfect⁶ – but hyper-viral police violence, and corresponding social harms, are bringing us further each day from that optimal state. And, in doing so, it is degrading the relationship between civilians and police, which then begs the question: what happens, and what can happen, to a society when its civilians do not trust the police?

II. “FERGUSON IS EVERYWHERE”⁷ – WHY GOOD-FAITH INDIVIDUALS ARE RELUCTANT TO CALL THE POLICE

(1) Adding Fuel to the Fire – Enhanced Fear of Calling Police in Minorities

It is hardly a revolutionary (or even noteworthy) observation that there is now, and long has been, a rampant distrust of police within minority communities. According to a 2017 Gallup poll, overall trust in police (that is, those who responded that they had “a great deal” or “quite a lot” of confidence in our law enforcement) dropped significantly – among all ethnic groups, genders, and political philosophies – from 57%

⁶ For brevity’s sake, I will define an optimal relationship between civilians and police as one where police are called each and every time it is necessary – and only when it is necessary – for police to serve their communities, and where police are trusted as close to equally among all civilians as is pragmatic not to use excessive force, selective enforcement, and other unfair, dangerous, racist, sexist, etc. policies. This largely theoretical view of “perfect policing” is derived from the phrase “to protect and to serve”, the official motto of the Los Angeles Police Department which has since been adopted by many other police departments, as a lodestar for the entire profession. *See The Origin of the LAPD Motto*, Los Angeles Police Department, http://www.lapdonline.org/history_of_the_lapd/content_basic_view/1128. If this optimal state of policing has ever existed in America, it certainly does not exist now.

⁷ In an article for BBC News, researcher and activist Sam Sinyangwe used the phrase “Ferguson is everywhere” when describing the results of his research and the corresponding data on police violence in America after the Michael Brown shooting in Ferguson, Missouri. *See generally, Why Do Police Keep Killing Unarmed Black Men*, BBC News (May 26, 2015), <https://www.bbc.com/news/world-us-canada-32740523>.

in June 2013 to a record-tying low of 52% in June 2015.⁸ This drop was likely due to several hyper-viral deaths of young black men at the hands of police between June 2013 and June 2015, including Eric Garner (who was killed by the NYPD in July 2014), Michael Brown (killed one month later by Officer Daren Wilson in Ferguson, Missouri), Laquan McDonald (who was shot sixteen times by Chicago police and killed in October 2014), Tamir Rice (a young boy killed by Cleveland police in November 2014), and Walter Scott (who was killed by North Charleston police in April 2015).⁹ Part of this reduction in police trust from June 2013 to June 2015 can also likely be attributed to the Black Lives Matter movement,¹⁰ which was founded in July 2013¹¹ and drew significant attention to police brutality throughout this time period. Interestingly though, since its low point in June 2015, overall trust in police has bounced back to 57% – the same rate it was in June 2013, before the deaths any of the aforementioned victims of police violence, or the formation of the Black Lives Matter movement.¹² Indeed, in 2017, there were only two institutions of the sixteen included in the survey which Americans trusted *more* than the police: the military (which 72% of Americans stated they had “a great deal” or “quite a lot” of confidence in) and small businesses (which 70% of respondents trusted).¹³ To wit, this poll found that Americans as a whole have more faith in police as an institution than they do in the United States Supreme Court and Congress *combined*.¹⁴

This may be good news for the state of law enforcement – at least in 2017 – in the United States. But, a further breakdown of police trust by race is illuminative: while 61% of white respondents stated that they trusted the police, only 45% of Hispanics and 30% of black individuals responded the same way.¹⁵ A similar disparity is seen when the statistic is

⁸ Jim Norman, *Confidence in Police Back at Historical Average*, Gallup Polls (July 10, 2017), <https://news.gallup.com/poll/213869/confidence-police-back-historicalaverage.aspx>.

⁹ *Timeline: Recent US Police Shootings of Black Suspects*, Australian Broadcasting Corporation (2019), <https://www.abc.net.au/news/2015-04-09/timeline-us-police-shootings-unarmed-black-suspects/6379472>.

¹⁰ For additional information on the Black Lives Matter movement, see Russell Rickford, *Black Lives Matter: Toward a Modern Practice of Mass Struggle*, 25 *New Labor Forum* at 34-42 (Dec. 8, 2015), <https://journals.sagepub.com/doi/abs/10.1177/1095796015620171?journalCode=nlfa>.

¹¹ *Black Lives Matter – Herstory*, BlackLivesMatter.com, <https://blacklivesmatter.com/about/herstory/>.

¹² See Norman, *supra* at footnote 8.

¹³ Frank Newport, *Americans' Confidence in Institutions Edges Up*, Gallup Polls (June 26, 2017), https://news.gallup.com/poll/212840/americans-confidence-institutions-edges.aspx?g_source=Politics&g_medium=newsfeed&g_campaign=titles.

¹⁴ *Id.*

¹⁵ See Norman, *supra* at footnote 8.

broken down by age group: 63% of those 55 and older expressed trust in the police, while only 54% of those 35-54 and 44% of those 18-34 did the same.¹⁶ Also, perhaps unsurprisingly, significantly fewer liberals and Democrats trusted police than Republicans and conservatives.¹⁷ Following this, distrust in police is likely the highest among young, liberal, black and Hispanic individuals.

It is a rather difficult task to determine exactly what the impetus of this distrust was, or even if there is one; in all likelihood, there is no singular or simple answer (and as a result, there is also no singular or simple strategy to enhancing minority trust in police – if, indeed, that is something that *should* be done). However, there are at least two phenomena that have had significant influence on this historic distrust between minority community members and police (and vice versa) which will be discussed in this section. These are: (a) changes in policing; and (b) the increased passage and enforcement of criminal policies that directly or indirectly target communities of color. Those phenomena have built an incredibly shaky foundation upon which police and minority communities stand in their interactions with each other on a regular basis – and, the widespread proliferation of hyper-viral police violence, discussed in part C, has only exacerbated the issue.

(1)(a) Changes in Policing

Much of what the average person sees in current interactions with police is a result of a 1980s theory of policing called “broken windows,” first published by social scientists George L. Kelling and James Q. Wilson.¹⁸ Rather than focusing on suppression of major crimes (and, by extension, focusing on the incapacitation and punishment of the people who commit those crimes) the “broken windows” theory instructed police to seek out indicators of social disorganization.¹⁹ This disorder, according to the authors, was the main source of “the anxiety now endemic in many big-city neighborhoods,” and should be stamped out immediately to quell fear and, by extension, reduce levels of violent crime.²⁰ The exemplary sign of this disorder was found in the broken window. “[O]ne unrepaired

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, *The Atlantic* (March 1982), <https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>.

¹⁹ For a more in-depth analysis of social disorganization theory, *see generally*: Robert J. Sampson & William Julius Wilson, *Toward a Theory of Race, Crime, and Urban Inequality*, *Race, Crime & Justice: A Reader* (2005), (http://scholar.harvard.edu/sites/scholar.harvard.edu/files/sampson/files/1995_theoryofrace_wilson.pdf).

²⁰ *See* Kelling & Wilson, *supra* at footnote 18.

broken window,” Kelling and Wilson wrote, “is a signal that no one cares, and so breaking more windows costs nothing . . . [and] vandalism can occur anywhere once communal barriers – the sense of mutual regard and the obligations of civility – are lowered by actions that seem to signal that ‘no one cares.’”²¹

There is significant evidence that broken windows policing is an ineffective and inefficient use of law enforcement resources.²² However, it is the political and sociological embrace of “broken windows” theory that has, when combined with various related policies, led to an emphasis on punishing minor crimes like vandalism, fare evasion, public drinking, and nonviolent drug offenses within minority communities in particular. Indeed, “broken windows” policing has not only been embraced, it has been enhanced, and emphasized – and, it is this “broken windows on steroids” method of neo-policing that has contributed to some of the police violence directed at young black men.²³ Indeed, the hyper-viral death of Eric Garner at the hands of police epitomizes just this type of policing, in the very same city – New York – where broken windows policing was first popularized and applied on a citywide scale in the mid-1990s, by commissioner William J. Bratton.²⁴ Regarding Mr. Garner, a local landlord contacted police to prevent Garner from selling loose cigarettes

²¹ *Id.*

²² Bernard Harcourt has written rather extensively on the failures of the broken windows theory. In one 2005 paper, he presented results from a five-city social experiment called Moving to Opportunity (MTO). MTO was arguably the first rigorous test of the broken windows hypothesis, in that it provided housing vouchers to 4,800 low-income families living in high-crime communities characterized by high rates of social disorder – the vouchers allowed these families to move to less disorderly communities. The experiment provided no support for a relationship between social disorder and crime as hypothesized by Wilson & Kelling. See Bernard E. Harcourt & Jens Ludwig, *Broken Windows: New Evidence from New York City and a Five-City Social Experiment*, Univ. of Chicago Pub. L. & Legal Theory Working Paper No. 93, (2005), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1047&context=public_law_and_legal_theory.

²³ One of the founders of “broken windows” theory – George L. Kelling – has remarked publicly on the problematic nature of the extension of his theory into various policies, and the adoption of “broken windows on steroids” within policing. He stated that, “[t]here’s been a lot of things done in the name of Broken Windows that I regret.” See Sarah Childress, *The Problem with ‘Broken Windows’ Policing*, Frontline – PBS (June 28, 2016), <https://www.pbs.org/wgbh/frontline/article/the-problem-with-broken-windows-policing/>.

²⁴ It is worth noting that the landlord who called police on Eric Garner has told press that he feels personally responsible for Mr. Garner’s death. He told the *New York Times* that he no longer calls the police to complain about the conditions surrounding his building, as he had frequently done prior to Mr. Garner’s death. “The last time I called the cops, someone got choked to death,” he said, “Eric got killed because I called.” See Al Baker et. al., *Beyond the Chokehold: The Path to Eric Garner’s Death*, *New York Times* (June 13, 2015), <https://www.nytimes.com/2015/06/14/nyregion/eric-garner-police-chokehold-state-n-island.html>.

on the street – this call abruptly turned into police choking Garner until his last breath, as he pleaded for his life.²⁵ But, Eric Garner is hardly the only black man who has been negatively impacted by broken windows policing.

In an article entitled “Police and the Black Male,” the authors analyzed the two types of police in a single community – the generally abhorred “downtown” police, who practiced broken-windows policing, and the more tolerable “local” police, who focused instead on “community-based” policing.²⁶ A local community member stated that the “downtown” police often conducted brutal, violent raids of bars in his neighborhood to intimidate people.²⁷ On the other hand, a local police officer stated that he and other members of his force maintain a “rapprochement” with community members and try to work together to reduce crime.²⁸ “Both of us,” the officer stated, referring to the police departments and the community members, “are willing to say, ‘Look, let’s try to help each other’ . . . it feels real good not to be the enemy.”²⁹ This “community-based policing,” wherein a cop is stationed on every corner and becomes a recognized and (at least to some degree) respected member of the community, was not uncommon – at least in certain communities – prior to the proliferation of “broken windows” policing.³⁰ And, in the interest of combatting police violence, it is only logical that a return to community-based policing is necessary.³¹ Community-based policing has been proven to reduce the perception of community disorder in general, thus ameliorating some of the more negative effects that broken windows and enhanced broken windows policing has had on minority communities.³² But, it also just makes sense; after all, who is more likely to brutalize – a fellow community member, who is invested in and personally knows the person he is injuring, or an anonymous face, brought in with the sole purpose of creating “order,” no matter the cost?

²⁵ *Id.*

²⁶ Elijah Anderson, *Police and the Black Male*, <https://bbs.pku.edu.cn/attach/69/2e/692e71b3c24f5381/LiuNeng04.pdf>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ For a more in-depth analysis of community policing, see generally Peter K. Manning, *Community Policing*, 3 Am. J. Police 205, 228 (1984), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ajpol3&div=18&id=&page=>.

³¹ See NORM STAMPER, *TO PROTECT AND SERVE: HOW TO FIX AMERICA’S POLICE* (2016), which calls for the creation of community-based police departments in all communities, urban and rural alike, as a method of mending the relationship between civilians and police.

³² *Community Policing and Procedural Justice*, Center for Evidence-Based Crime Policy, <https://cebcp.org/evidence-based-policing/what-works-in-policing/research-evidence-review/community-policing/>.

(1)(b) “Tough on Crime” Policies that Target Minority Communities

Inexorably tied to the evolution of policing from “community based” to “broken windows” in nature is the promulgation of “tough on crime” policies by police and politicians alike. Understandably, the “tough on crime” movement and its associated rhetoric is appealing on its face – after all, what could be better for a politician than a platform that emphasizes community safety? “Criminals” have become social scapegoats for nearly all of society’s ills, with “tough on crime” policies (particularly those relating to the so-called “war on drugs” and mass incarceration) as the cure. However, there are quite a few problems with these policies – most importantly, that there is little evidence they actually make communities safer and that their cost outweighs what little benefit they may provide. Mass incarceration, for example, fiscally costs federal and state governments and American taxpayers \$182 billion each year (when taking into account not only the costs of operating prisons, jails, parole, and probation, but also the costs of policing and court costs, and costs paid to families to support incarcerated loved ones).³³ And, although violent crime rates in the United States have (more or less) declined steadily since the 1990s, this is hardly solely (or even mostly) due to mass incarceration.³⁴ Indeed, a report from the Brennan Center for Justice found that mass incarceration explained between 0 and 7 percent of the crime drop.³⁵ This slight contribution can hardly be justified by these policies, not only due to their aforementioned fiscal cost, but also due to their social cost.

Both mass incarceration and the war on drugs systematically target racial and ethnic minorities, which is evident when examining the prison population in the United States. According to statistics published by the National Association for the Advancement of Colored People (NAACP), despite comprising approximately 32% of the nation’s overall population, African-American and Hispanic people comprised 56% of all

³³ *Mass Incarceration Costs \$182 Billion Every Year, Without Adding Much to Public Safety*, Equal Justice Initiative (Feb. 6, 2017), <https://eji.org/news/mass-incarceration-costs-182-billion-annually>.

³⁴ There are several factors that have contributed to the declining rates of violent crime in the United States since the 1990s. One paper even theorized that the Supreme Court’s decision improving access to legal, safe abortions in *Roe v. Wade*, 410 U.S. 113 (1973), had an immense impact in reducing violent crime. *See generally*, John J. Donohue III & Steven D. Levitt, *The Impact of Legalized Abortion on Crime*, *The Quarterly Journal of Economics* (May 2001), <http://pricetheory.uchicago.edu/levitt/Papers/DonohueLevittTheImpactOfLegalized2001.pdf>.

³⁵ German Lopez, *Mass Incarceration Doesn’t Do Much to Fight Crime. But It Costs an Absurd \$182 Billion a Year*, *Vox* (Jan. 27, 2017), <https://www.vox.com/policy-and-politics/2017/1/27/14388024/mass-incarceration-cost>.

incarcerated people in 2015.³⁶ The same statistics noted that African-Americans are incarcerated at more than five times the rate of whites.³⁷ Indeed, the NAACP found that if African-Americans and Hispanics were incarcerated at the same rates as whites, American prison and jail populations would decline by almost 40%.³⁸ And, these significant disparities found in our prison populations are not present because racial minorities simply commit crimes at higher rates than whites. Regarding drug crimes in particular, the NAACP stated that African-Americans and whites use drugs at similar rates, but the imprisonment rate for African-Americans for drug charges is almost six times that for white individuals.³⁹ Furthermore, African-Americans represent 12.5% of illicit drug users, but represent 33% of those incarcerated in state facilities for drug offenses.⁴⁰ As these statistics clearly show, the criminal justice system is overwhelmingly unfriendly – even hostile – to racial minorities and their communities, beginning at the policing stage and trickling all the way up to impact courts, sentencings, and incarceration. Members of minority groups hardly need another reason not to trust the police; but, this is precisely what is given to them on an almost daily basis, through the proliferation of accessible, hyper-viral media depicting police violence.

(1)(c) Hyper-Viral Police Violence, From Rodney King to Michael Brown

It is difficult, now, to imagine a world *without* easily accessible footage of police violence. However, for the vast majority of American history, civilians did not walk around with cameras in their back pockets; and as such, police violence went widely unrecorded and unnoticed. One of the first – and most infamous – incidents of recorded police violence occurred on March 3, 1991, when Rodney King was violently beaten by police officers in a suburb of Los Angeles, California.⁴¹ King, an African-American motorist, was speeding and was pursued by police officers.⁴² A brief chase ensued, and King was eventually met with twenty-one police

³⁶ *Criminal Justice Fact Sheet*, National Association for the Advancement of Colored People, <https://www.naacp.org/criminal-justice-fact-sheet/>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Peter Feuerherd, *Why Didn't the Rodney King Video Lead to a Conviction?*, JSTOR Daily (Feb. 28, 2018), <https://daily.jstor.org/why-rodney-king-video-conviction/>.

⁴² Ronald N. Jacobs, *Civil Society and Crisis: Culture, Discourse, and the Rodney King Beating*, 101 *American Journal of Sociology* 5 (Mar. 1996), <https://www.jstor.org/stable/2782354?mag=why-rodney-king-video-conviction&seq=2#metadatainfortabcontents>.

personnel, including Los Angeles Police Department (LAPD) and California Highway Patrol officers.⁴³ King was then brutally beaten by three white LAPD officers, as a sergeant and the remaining seventeen officers looked on.⁴⁴ Unbeknownst to the officers, the altercation was filmed by George Holliday, who stepped out onto his balcony that day, saw the beating, and began recording it with a Sony HandyCam camcorder.⁴⁵ The footage⁴⁶ was then sold to a television station, where it was broadcast nationwide – it is now widely considered the first “viral video” depicting police violence, despite being recorded and shown largely in the pre-Internet age.⁴⁷

More than one year after the beating – and well after the American public had seen Holliday’s amateur footage – the four white officers seen beating King in the video were acquitted of criminal charges; immediately following, over five days in the spring of 1992, the city of Los Angeles erupted into riots, later referred to as the Los Angeles Uprisings.⁴⁸ By the end of the uprisings, more than fifty people were dead, more than 2,000 were injured, and over 1,000 buildings in the Los Angeles area were destroyed or damaged (costing an estimated \$1 billion).⁴⁹ It was, at the time, the “largest civil disturbance in American history.”⁵⁰ And, although two officers – Sergeant Stacey Koon and Officer Laurence Powell – were later convicted of violating King’s civil rights and sentenced to thirty months in prison each, the original acquittal of all four officers became a disturbing bellwether of an upcoming trend of a lack of institutional responsibility for police violence.⁵¹ Furthermore, Holliday’s split-second decision to film King’s beating sparked a movement of “citizen journalism”⁵² whereby bystanders leap into action to record police who they see abusing minorities – a movement that has only been enhanced and

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Erik Ortiz, *George Holliday, Who Taped Rodney King Beating, Urges Others to Share Videos*, NBC News (June 9, 2015), <https://www.nbcnews.com/nightly-news/george-holliday-who-taped-rodney-king-beating-urges-others-share-n372551>.

⁴⁶ The graphic footage of the beating itself is available via the FBI’s online records vault, at <https://vault.fbi.gov/rodney-king/video/rodney-king-video>.

⁴⁷ See Ortiz, *supra* at footnote 45.

⁴⁸ *Los Angeles Riots Fast Facts*, CNN Library (Mar. 27, 2018), <https://www.cnn.com/2013/09/18/us/los-angeles-riots-fast-facts/index.html>.

⁴⁹ *Id.*

⁵⁰ See Feuerherd, *supra* at footnote 41.

⁵¹ Seth Mydans, *Sympathetic Judge Gives Officers 2 ½ Years in Rodney King Beating*, New York Times (Aug. 5, 1993), <https://www.nytimes.com/1993/08/05/us/sympathetic-judge-gives-officers-2-1-2-years-in-rodney-king-beating.html>.

⁵² See Ortiz, *supra* at footnote 45.

facilitated by the proliferation of cell phones with photo and video recording capabilities.⁵³

It is undeniable that videos of police violence are more accessible now than ever before, because of the aforementioned commonality of cell phones combined with the rise of social media, where these videos “go viral,” and can then be viewed by millions of people in the span of a few hours or days.⁵⁴ However, it is difficult to say if actual rates of police violence have gone up as well. Neither police forces nor the FBI track police *violence*, per se; but, the federal government does track police killings through the FBI’s Supplementary Homicide Reports (SHR) and the Bureau of Justice Statistics’ Arrest-Related Deaths (ARD) databases.⁵⁵ However, in all likelihood these databases both vastly underestimate the actual number of how many people police actually kill each year, notwithstanding the fact that they also do not include people who are injured, but not killed, by police each year (as Rodney King was).⁵⁶ Indeed, according to a 2015 study published by the Bureau of Justice Statistics, from 2003 to 2009 and 2011, the ARD recorded approximately 49% of people killed by police while the SHR captured 46%.⁵⁷ When accounting for overlap between these two databases, 28% of homicides by law enforcement still went unrecorded – that is, more than one-quarter of deaths caused by police were not tracked *at all* under either federally-sanctioned database.⁵⁸

⁵³ According to a 2018 Pew Research Center poll, 96% of Americans now own a cell phone of some kind, while 81% own smartphones. Both of these numbers have increased since 2002 (when the Pew Research Center first began tracking cell phone ownership rates, and 62% of Americans owned cell phones) and 2011 (when they first began tracking smartphone ownership rates, and 35% of Americans owned smartphones). All smartphones and some cell phones have video and photo abilities. See *Mobile Fact Sheet*, Pew Research Center (Feb. 5, 2018), <http://www.pewinternet.org/fact-sheet/mobile/>.

⁵⁴ Generally speaking, videos and websites “go viral” through sharing. In order to be considered “viral” in the technical sense of the term, on average, every time one person engages with your website or watches your video, that person must share and get at least one other person to visit the site – spawning new “generations” of viewers. Mathematically, this means that your “virality ratio” per generation of viewers/visitors must be greater than one. The ratio is calculated as follows: Generation X visitors/Generation X-1 visitors = the Generation X virality ratio. See Anna Schmitz, *The Math of Going Viral*, ShareProgress.org, <https://www.shareprogress.org/blog/math-going-viral/>.

⁵⁵ German Lopez, *There’s No Good Official Data on How Many People Police Kill Each Year*, Vox (Nov. 14, 2018), <https://www.vox.com/identities/2016/8/13/17938206/police-shooting-killing-data>.

⁵⁶ *Id.*

⁵⁷ Duren Banks, et. al., *Arrest Related Deaths Program Assessment: Technical Report*, Bureau of Justice Statistics (March 3, 2015), <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=5259>.

⁵⁸ See Lopez, *supra* at footnote 55.

Certain independently-run organizations and media outlets (including *The Washington Post* and *The Guardian*) have recently begun tracking data on police violence, but the data is so new that it is of limited use in tracking trends over time.⁵⁹ According to *The Washington Post*'s database (which began tracking police-caused deaths in 2015), approximately one thousand people have been killed by police each year since 2015, with a total of 995 in 2015, 963 in 2016, 987 in 2017, and 973 as of December 2018.⁶⁰ If these numbers are accurate, then police killings themselves have not gone up (at least not significantly, and not consistently) since 2015. But *videos* of police violence are more accessible now than ever before – here, the numbers speak for themselves. In 2014, a video of Eric Garner (the aforementioned New York resident who was allegedly illegally selling loose cigarettes) being killed by police surfaced.⁶¹ The video was particularly memorable because it showed an asthmatic Garner literally begging for his life as he was taken into the chokehold that eventually killed him, telling the officers over and over again “I can’t breathe, I can’t breathe.”⁶² By 2018, the video – dubbed a “public execution” by the uploader – had been viewed over 3.2 million times on YouTube.⁶³ Months later, the officers who killed Garner failed to be indicted by a grand jury; and, as with Rodney King, protests erupted in New York and other major cities across the country once the decision was released (although these protests were largely peaceful).⁶⁴ Even professional athletes such as Chicago Bulls guard Derrick Rose and Detroit Lions running back Reggie Bush showed solidarity with Garner by donning shirts with “I can’t breathe” written on them – epitomizing the collective outrage that so many Americans felt after seeing the traumatizing footage of Garner’s unnecessary death.⁶⁵

⁵⁹ *Id.*

⁶⁰ *Fatal Force*, Washington Post (last updated 2018), https://www.washingtonpost.com/graphics/2018/national/police-shootings-2018/?noredirect=on&utm_term=.2323ec2bf5be.

⁶¹ Paul Mejia, *Second Eric Garner Video Has Surfaced on Facebook*, Newsweek (Dec. 6, 2014), <https://www.newsweek.com/second-eric-garner-video-has-surfaced-facebook-289876>.

⁶² *NYPD Publicly Executes Eric Garner for Illegal Cigarettes*, THEADVISESHOWTV – YOUTUBE (July 22, 2014), <https://www.youtube.com/watch?v=g-xHqf1BVE4&t=124s>.

⁶³ *Id.*

⁶⁴ J. David Goodman & Al Baker, *Wave of Protests After Grand Jury Doesn’t Indict Officer in Eric Garner Chokehold Case*, New York Times (Dec. 3, 2014), <https://www.nytimes.com/2014/12/04/nyregion/grand-jury-said-to-bring-no-charges-in-staten-island-chokehold-death-of-eric-garner.html>.

⁶⁵ Ben Candeia, *Pro Athletes Don ‘I Can’t Breathe’ Shirts in Support of Eric Garner Protesters*, ABC News (Dec. 8, 2014), <https://abcnews.go.com/Sports/pro-athletes-don-breathe-shirts-support-eric-garner/story?id=27437509>.

Less than two years later, Philando Castile (a school cafeteria supervisor and Minnesota resident) was driving with his girlfriend, Diamond Reynolds when the car was pulled over on the incorrect suspicion that Castile had committed a robbery.⁶⁶ He was legally carrying a gun and told the responding officer as much. According to Reynolds, Castile then reached for his driver's license; the officer allegedly believed he was reaching for the gun instead, and shot and killed him.⁶⁷ Reynolds streamed the aftermath of the shooting on Facebook Live – including shots of the bloodied and dying Castile – and, this video (like the one of Garner's death) was viewed at least 3.2 million times.⁶⁸ As with the officers who beat Rodney King, and those who killed Eric Garner, the officer who killed Castile was acquitted,⁶⁹ and thousands of people protested in Minnesota after the verdict as a result.⁷⁰

The stories of Eric Garner and Philando Castile are, unfortunately, not unique. Tamir Rice, a twelve-year old Cleveland boy playing with a toy gun, was killed by police in 2014 – the very same year that Garner was killed.⁷¹ The footage (which appeared to be from a street surveillance camera, rather than from a bystander's phone or other device) showed police killing Rice almost as soon as they arrived on the scene.⁷² It has been viewed on YouTube over 440,000 times.⁷³ The officer who killed Rice was not indicted on criminal charges, nor was his partner,⁷⁴ and protests erupted as a result not only in Cleveland, but in five other

⁶⁶ Heidi Glenn, *A Student Remembers Her School's 'Lunch Man,' Philando Castile*, National Public Radio (July 6, 2018), <https://www.npr.org/2018/07/06/626094420/a-student-remembers-her-schools-lunch-man-philando-castile>.

⁶⁷ Mitch Smith, *Minnesota Officer Acquitted in Killing of Philando Castile*, New York Times (June 16, 2017), <https://www.nytimes.com/2017/06/16/us/police-shooting-trial-philando-castile.html>.

⁶⁸ Brian Stelter, *Philando Castile and the Power of Facebook Live*, CNN (July 7, 2016, 2:42 PM), <https://money.cnn.com/2016/07/07/media/facebook-live-streaming-police-shooting/>.

⁶⁹ See Smith, *supra* note 67, at 1.

⁷⁰ Although the protests in Minnesota were mostly peaceful, eighteen people were arrested during the protests for failing to comply with orders to disperse. See Bill Kirkos & Ralph Ellis, *Philando Castile Shooting: 18 Arrested As Thousands Protest Verdict*, CNN (June 17, 2017, 12:30 PM), <https://www.cnn.com/2017/06/16/us/philando-castile-verdict-protests/index.html>.

⁷¹ Eric Heisig, *Tamir Rice Shooting: A Breakdown of The Events that Led to the 12-Year-Old's Death*, CLEVELAND.COM (Jan 14, 2017), https://www.cleveland.com/court-justice/index.ssf/2017/01/tamir_rice_shooting_a_breakdown.html.

⁷² TomoNews US, *Tamir Rice Shooting Video: Footage Shows Cleveland Cops Shoot Boy 2 Seconds After Arriving*, YOUTUBE (Nov. 26, 2014), <https://www.youtube.com/watch?v=mSCftESyKyU>.

⁷³ *Id.*

⁷⁴ Ashley Fantz et. al., *Tamir Rice Shooting: No Charges for Officers*, CNN (Dec. 28, 2015, 7:22 PM), <https://www.cnn.com/2015/12/28/us/tamir-rice-shooting/index.html>.

American cities as well.⁷⁵ Bystander footage of Walter Scott (an unarmed black man who was shot in the back eight times by a police officer in 2015)⁷⁶ racked up over 788,000 views on YouTube.⁷⁷ Footage of Alton Sterling (a black man selling CDs on the street in Baton Rouge, Louisiana, who was killed by police while they had him pinned to the ground)⁷⁸ currently has over 2.2 million views on YouTube.⁷⁹ And, dashcam footage of the murder⁸⁰ of Laquan McDonald (a black teenager who was shot sixteen times, including after he was on the ground, by Chicago police officer Jason Van Dyke) has been viewed on YouTube over 4.3 million times.⁸¹

These videos are easy – almost too easy⁸² – to view. It is difficult to imagine, now, being able to scroll through one’s various social media

⁷⁵ *Tamir Rice Protestors Take to Streets in Cleveland*, USA TODAY (Dec. 30, 2015, 11:53 PM), <https://www.usatoday.com/story/news/nation-now/2015/12/30/tamir-rice-cleveland-protest/78100024/>.

⁷⁶ Alan Blinder, *Michael Slager, Officer in Walter Scott Shooting, Gets 20-Year-Sentence*, N.Y. TIMES (Dec. 7, 2017), <https://www.nytimes.com/2017/12/07/us/michael-slager-sentence-walter-scott.html>.

⁷⁷ ABC News (Australia), *Warning: Graphic Violence. Real-Time Events of Walter Scott Shooting*, YOUTUBE (Apr. 9, 2015), <https://www.youtube.com/watch?v=ym4tE0SQCZY>.

⁷⁸ Nicole Chavez, *Body Camera Shows Officer Threatened to Shoot Alton Sterling Within Seconds*, CNN (Mar. 31, 2018, 12:49 PM), <https://www.cnn.com/2018/03/31/us/alton-sterling-police-videos-hearings/index.html>.

⁷⁹ CBS News, *New Video Released of Alton Sterling Shooting*, YOUTUBE (July 6, 2016), <https://www.youtube.com/watch?v=pdGXhSQvTKc>.

⁸⁰ The word “murder” is used here – and only here – because Officer Van Dyke was, in fact, found guilty of second-degree murder in the death of Laquan McDonald. He was also found guilty of sixteen counts of aggravated battery – one for each time that he shot Mr. McDonald. He is currently serving a six year and nine-month sentence. *See A Timeline of the Chicago Police Shooting of Laquan McDonald*, THE ASSOCIATED PRESS (Mar. 19, 2019), <https://www.apnews.com/a0417f6d06154f92af7b0915844ea8c4>.

⁸¹ Block Club Chicago, *Dashcam Video of Officer Jason Van Dyke Shooting Laquan McDonald*, YOUTUBE (Nov. 24, 2015), https://www.youtube.com/watch?time_continue=401&v=Ix2N6_jLAga.

⁸² Metrics clearly show that hyper-viral videos of police violence are being viewed hundreds of thousands, or even millions of times. But, they cannot show *why* individuals are choosing to watch and share these videos – whether that is to gain awareness of police violence against people of color and serve as an advocate in good faith, or as a form of perverse, twisted and racist voyeurism – or, for some reason in between those two extremes. In this way, these videos are somewhat reminiscent of lynching postcards, which were originally used to glorify white supremacy and later used by the NAACP to support and raise money for anti-lynching legislation. *See* Robin Pogrebin, *A Quest for Photographs He Could Barely Look At*, N.Y. TIMES (Jan. 13, 2000), <https://www.nytimes.com/2000/01/13/arts/a-quest-for-photographs-he-could-barely-look-at.html>. A large collection of these postcards is currently owned by a white man named James Allen, who has published a book showcasing the postcards in his possession. His motives have often been questioned as well; a writer for the *Los Angeles Times* once wrote of Mr. Allen, “Was he motivated by compassion – or money? Is he a crusader – or a

accounts⁸³ for one week straight without viewing some sort of police violence, usually directed towards unarmed black men. The accessibility of these videos and its associated hyper-virality, despite being a fairly recent phenomenon, is already having negative effects on viewers. In an article for *The Guardian*, Judith Alpert (a professor of applied psychology at New York University) noted that these videos are traumatic, stating that “There’s no question you can be traumatized by what you’re seeing on television.”⁸⁴ Indeed, research conducted regarding terrorism-related news footage found that repeated viewing can lead to symptoms of post-traumatic stress disorder, particularly in people who have previous exposure to violence.⁸⁵ Following this, it is only logical that many individuals in our society – who are consistently exposed to repeated viewings of police shooting after police shooting – are experiencing trauma. But, this trauma particularly affects people of color.

Black Brooklyn-based photographer Ray Neutron stated in the aforementioned article for *The Guardian* that viewing videos of police violence had caused him to experience “[n]ightmares, anxiety, depression, and irrational (maybe not irrational) fear of police, for starters.”⁸⁶ A separate article for *Huffington Post* quoted social psychology expert Phillip Atiba Goff, who noted that repeated viewing of police violence can

voyeur?” See J.R. Moehringer, *An Obsessive Quest to Make People See*, L.A. Times (Aug. 27, 2000, 12:00 AM), <https://www.latimes.com/archives/la-xpm-2000-aug-27-mn-11152-story.html>.

⁸³ Social media in general has played a significant role in facilitating the virality of hyper-viral police violence. And, it is questionable once again whether social media platforms (like Facebook Live, where the shooting of Philando Castile was streamed) are allowing these violent videos onto their sites as an expression of social responsibility, or merely because the hyper-viral viewing numbers that these videos generate is beneficial to their bottom line. Dr. Mary Anne Franks, a scholar on law and technology, argues for the latter, writing that “Facebook has helped unleash the scourge of live-streamed murders, rapes, and assaults on the world without taking any real responsibility for doing so. And indeed, why would it? There’s little incentive for largely unregulated, immensely profitable corporations to keep dangerous but lucrative products out of the public sphere.” In short, she concludes that “The internet is currently overrun with violence, threats, revenge porn, propaganda, and conspiracy theories . . . which disproportionately burden women and racial, religious, and sexual minorities, [and] are facilitated by powerful tech corporations with little incentive to pour their considerable resources into eliminating them.” See Mary Anne Franks, *Justice Beyond Dispute*, 131 HARV. L. REV., 1374, 1396 (2018) (book review).

⁸⁴ Jamiles Lartey, *Nightmares, Anxiety, Trauma: What Watching Police Shootings Does to Us*, *The Guardian* (July 15, 2016), <https://www.theguardian.com/world/2016/jul/15/police-shooting-videos-trauma-alton-sterling-philando-castile>.

⁸⁵ Liz Adetiba & Anna Almendrala, *Watching Videos of Police Brutality Can Traumatize You, Especially If You’re Black*, *Huffington Post* (July 8, 2016, 6:53 PM), https://www.huffingtonpost.com/entry/watching-police-brutality-videos_us_577ee9b3e4b0344d514eaa5d.

⁸⁶ See Lartey, *supra* note 84.

lead to emotions spanning “from trauma to terror” for black individuals because it encompasses a “. . . trauma [that] occurs and recurs in a context where it feels you have no control over it, and it’s being done by powerful people for whom there are no consequences . . .”⁸⁷ The article also quoted clinical psychologist Monnica Williams, who stated that when people of color “. . . see other people like you who are being victimized, it makes you feel that the world’s not a safe place for people like you.”⁸⁸ Taking all of this into account, it is likely that at least part of this trauma⁸⁹ that people of color experience leads to a deep distrust of police officers – making those individuals trust police less, now, than they ever have before.

(2) The Spillover Effect – How Hyper-Viral Police Violence Can Make Non-Black, Non-Male Individuals Afraid to Call the Cops

While the psychological impacts of police violence may disproportionately affect people of color, there are other sociological effects of this rampant problem that are not contained within minority communities. Rather, these “spillover” effects have impacted all informed individuals (that is, anyone who regularly sees footage of hyper-viral police violence) even if these individuals are not part of the demographic most vulnerable to being impacted by police violence (that is, young, black men). Just as the previous section began with a history of policing and related criminal justice policies particularly as they relate to minority communities, this section will first discuss various police-involved programs and media representation of police officers in general, which portrayed police officers in a positive light, in contrast with the violent depiction of cops currently being shown via bystander footage of police violence. The next part of this section will analyze so-called “just world” theory – which has allowed non-minority individuals to blame the victims of police violence, rather than examining the institutional problems with police – and how reliance on that theory is slowly declining (at least in a

⁸⁷ See Adetiba & Almendrala, *supra* note 85.

⁸⁸ *Id.*

⁸⁹ On trauma more generally, Holocaust survivor Geoffrey H. Hartman wrote that “. . . the knowledge of trauma, or the knowledge which comes from that source, is comprised of two contradictory elements. One is the traumatic event, registered rather than experienced. It seems to have bypassed perception and consciousness, and falls directly into the psyche. The other is a kind of memory of the event, in the form of a perpetual troping of it by the bypassed or severely split (dissociated) psyche.” As applied to hyper-viral police violence, the omnipresence of these videos likely leads to consistent layering of traumas, one on top of the other. And, each time a person of color views one of these videos, it is possible they are both being re-traumatized as well as remembering each of their past traumas. See Geoffrey H. Hartman, *On Traumatic Knowledge and Literary Studies*, in 26 *New Literary History* 537, 537 (Vol. 26, No. 3, 1995), https://www.sas.upenn.edu/~cavitch/pdf-library/Hartman_Traumatic.pdf.

portion of the racial majority) due to hyper-viral police violence. The final part of this section will then discuss how the decision to call the police (or not) has become a conscious assessment of risk for informed, good-faith individuals, and speculate as to whether a tortious analysis can (or would) be applied to find individuals who call the police civilly liable in instances of police violence.

(2)(a) What Happened to Officer Friendly? – The Evolving Representation of Police

Members of minority groups – particularly people of color – are taught (either implicitly or explicitly) from a young age not to trust the police.⁹⁰ Perhaps at least partially as an effort to combat those teachings, police across the country have historically been involved in supposed “educational” campaigns that realistically amount to public relations crusades that strive to paint police in a purely positive light. One of these was the so-called “Officer Friendly” campaign, which was created by the Chicago Police Department in 1966 as a response to anti-police sentiment.⁹¹ That year alone, the program – which aimed to “offer children a kinder, gentler face of law enforcement” – reached 10,000 children.⁹² And, after that year had proven its success, The Sears Roebuck Foundation sponsored an expansion of the Officer Friendly program into two hundred cities across the country, through 1986.⁹³ Officer Friendly brought police officers into schools to teach children about, among other things, how to safely cross the street and to look out for “stranger danger.”⁹⁴ At the same time, the program fostered a culture of friendship, collaboration, and communication between young Americans and police officers. One poster on a nostalgia-filled Facebook page regarding “Old Time D.C.” encompassed the effect of the Officer Friendly program on him rather well

⁹⁰ A 1997 article for the *New York Times* delved into the specific education that many black and Hispanic parents provide to their children, throughout New York. As they wrote, “In black and Hispanic homes . . . mistrust, even fear, of the police is a fact of life So, much as all parents broach sensitive topics like AIDS and sexuality or drug use, black and Hispanic parents say they talk to their children about dealing with the police. It is just a matter of time, they tell them, before they encounter a police officer who sees dark skin as synonymous with crime.” See Felicia R. Lee, *Young and in Fear of the Police; Parents Teach Children How to Deal with Officer’s Bias*, N.Y. Times (Oct. 23, 1997), <https://www.nytimes.com/1997/10/23/nyregion/young-fear-police-parents-teach-children-deal-with-officers-bias.html>.

⁹¹ Eric Easter, *Whatever Happened to ‘Officer Friendly?’* Ebony.com: Urban News Service (Aug. 12, 2016), <https://www.ebony.com/news/police-relations-officer-friendly/>.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Mike Carter-Conneen, *DC Police Bring Back Officer Friendly Program*, ABC News - WJLA (May 15, 2018), <https://wjla.com/news/local/officer-friendly-program-dc-police>.

– “I remember we used to like the cops,” he wrote, “WHAT HAPPENED?”⁹⁵

The various Officer Friendlies (and the program that was their namesake) was not the only positive depiction of police that many American children witnessed growing up. Consider, for example, the substantially similar D.A.R.E. (Drug Abuse Resistance Education) program.⁹⁶ D.A.R.E. essentially picked up where Officer Friendly left off and brought officers into schools (albeit this time, to teach about drug abstinence) from the 1980s all the way through the mid-2000s.⁹⁷ Because one of the “cornerstones” of the D.A.R.E. program was to encourage officers to build up young participants’ self-esteem,⁹⁸ it likely had a similar effect as the Officer Friendly program in perpetuating the idea that police officers are friendly, kindly community mainstays.

Then, of course, there were the heroic depictions of police officers in film and television. These characters historically embodied hyper-masculine characteristics (think: the mustachioed Frank Reagan, played by Tom Selleck, from cop drama *Blue Bloods*,⁹⁹ or the decorated veteran-turned-FBI agent Seely Booth, from crime drama *Bones*).¹⁰⁰ But as time has gone on, depictions of the hero-cop have crossed gender barriers –

⁹⁵ See Easter, *supra* note 91.

⁹⁶ About D.A.R.E., DARE.org, <https://dare.org/about/> (last visited Spring 2019).

⁹⁷ Although D.A.R.E. did survive for a number of years and may have encouraged young Americans from the 1980s-2000s to favorably view police officers, it was not effective in its main goal of encouraging young Americans to abstain from drugs. Studies done on the program’s effectiveness “... found ‘no significant differences in illicit drug use’ between the D.A.R.E. group and the control group.” D.A.R.E. actually increased drug use in certain populations who had been through the program. See Rosie Cima, *DARE: The Anti-Drug Program That Never Actually Worked*, Priceonomics (Oct. 1, 2015), <https://priceonomics.com/dare-the-anti-drug-program-that-never-actually/>.

⁹⁸ *Id.*

⁹⁹ See Steve Eighinger, *Best Cop Show of All-Time? How About ‘Blue Bloods?’*, Herald-Whig (Nov. 8, 2018, 12:01 AM), <https://www.whig.com/20181108/best-cop-show-of-all-time-how-about-blue-bloods#>.

¹⁰⁰ Seely Booth is a particularly interesting character – he originally embodies several characteristics of the traditionally (that is, toxically) masculine cop shown on so many TV dramas. But as the series goes on, he becomes more sensitive, largely with the help of brilliant anthropologist Dr. Temperance Brennan, who becomes his wife. On one hand, their love story may symbolize the ways in which opposites attract, and how two equally successful individuals can constantly push each other to strive for better. On the other hand, their love story may represent the significant labor that women – even authors, forensic anthropologists, and crime-solvers like Dr. Brennan – are expected to put into their relationships with men whose emotional development has been stunted by the trappings of traditionally toxic masculinity. See Sean Axmaker, *Why ‘Bones’ Was One of the Most Interesting Love Stories on TV*, N.Y. Magazine: Vulture (Mar. 28, 2017), <https://www.vulture.com/2017/03/bones-was-one-of-the-most-interesting-love-stories-on-tv.html>.

from Olivia Benson (from *Law and Order: Special Victims Unit*)¹⁰¹ to Lieutenant Judy Hopps (from the 2016 animated Disney film *Zootopia*),¹⁰² both male and female police officers are shown in the media as valiant idols who can do no wrong. And, this constant barrage of good-cop fundamentalism has had an impact on the general views of the American public regarding their faith and trust in police officers and in the police as an institution. As previously mentioned, despite the millions of people that have viewed police shootings online, the majority of Americans still trust the police,¹⁰³ more than almost any other institution in the country.¹⁰⁴ And, a study found that even when respondents who regularly view police crime dramas (such as *Law and Order*) see the officers in those shows using force, they are likely to believe that the force was used only because it was

¹⁰¹ Olivia Benson (who began *Law and Order: SVU* as an NYPD detective and, as the series has moved through its twenty seasons, has moved up in the ranks and currently serves as an NYPD lieutenant) is not only a crime-stopping police officer – she also is an advocate for the victims of sexual assault that she has encountered on nearly each of the show’s more than 400 episodes thus far. The character, played by actress Mariska Hargitay, is often considered a strong, female role model. As a writer for CNN opined, “Olivia showed me that you can be both fierce and fragile. Now, I routinely ask myself: What would Olivia Benson do? I can’t help but think Olivia Benson is the female role model we need in 2018.” See Melissa Blake, *Why Olivia Benson is the Role Model We Need Right Now*, CNN (Sept. 27, 2018, 7:24 AM), <https://www.cnn.com/2018/09/27/opinions/law-and-order-svu-20th-season-mariska-hargitay-melissa-blake/index.html>.

¹⁰² Lieutenant Judy Hopps is an animated rabbit who serves as the first rabbit police officer of *Zootopia* in the Disney film by the same name. With her partner – a fox named Nick Wilde – by her side, Lieutenant Hopps solves the drug epidemic plaguing *Zootopia* and ends the film a hero. It is worth noting that this drug epidemic causes specific classes of animals (“predators”) to be denied from jobs and treated like general societal menaces. Lieutenant Hopps finds that the drugs were being introduced to the predator community by the assistant mayor, with the goal of enhancing stereotypes against predators and reducing their presence in society and in institutions like the police. As political science professor Jason Johnson wrote for *The Root*, this is directly analogous to “. . . the realization that members of the CIA either wittingly or unwittingly helped introduce crack cocaine into minority communities in the 1970s and ‘80s . . . [t]he subsequent destruction of mostly black neighborhoods made it easier for white political leaders and pundits to dismiss African-American communities as filled with ‘crack babies,’ ‘welfare queens,’ and ‘superpredators.’ There can never be enough attention paid to this dark time in American history, even if it comes out of the mouths of furry animated creatures.” Having Lieutenant Hopps – as a police officer – act as the hero in this particular scenario is not only ironic, it also perpetuates the idea that police officers are separate entities from complex criminal policies that have hit minorities the hardest, such as the war on drugs and mass incarceration. See Jason Johnson, *Zootopia: Yes, Disney Made a Movie About White Supremacy and the War on Drugs*, *The Root* (Mar. 11, 2016, 1:12 PM), <https://www.theroot.com/zootopia-yes-disney-made-a-movie-about-white-supremacy-1790854559>.

¹⁰³ See Norman, *supra* note 8.

¹⁰⁴ See Newport, *supra* at footnote 13.

“necessary.”¹⁰⁵ The near-constant presence of this media is likely one reason that the official “Black Lives Matter”¹⁰⁶ page on Facebook has 327,000 “likes”, whereas the largest “Blue Lives Matter”¹⁰⁷ Facebook page has 2.1 million “likes.” These numbers are imprecise metrics, but they do speak to the fact that most Americans are conditioned to approve of the police – whether that is in their best interest, or not.

However, as videos of police violence have become more accessible, the representation of police in media has also evolved to reflect the more complex relationship that all informed Americans are beginning to form with police. For example, the 2017 film *Detroit* depicted a 1967 police raid conducted by mostly white police officers in the Algiers Motel, mostly occupied by black individuals. On that day, Detroit police officers had received word that a gunman was seen near the Algiers Motel; in a supposed quest to find the gunman, police officers allegedly beat and terrorized the black occupants of the motel.¹⁰⁸ Three black men – eighteen-year-old Fred Temple, nineteen-year-old Aubrey Pollard, and seventeen-year-old Carl Cooper – were killed at the motel, by shotgun blasts fired at close range.¹⁰⁹ No gun was ever found at the scene,¹¹⁰ and while three white police officers were charged with various crimes relating to the killings, all three were acquitted by an all-white jury.¹¹¹ The film shows, at length, white police officers terrorizing innocent black individuals, prompting critics to call the film “deeply unsettling . . . a clear-cut portrayal of racist white officers who violently violated the civil rights of

¹⁰⁵ Kathleen M. Donovan & Charles F. Klahm, IV, *The Role of Entertainment Media in Perceptions of Police Use of Force*, in 42 Criminal Justice and Behavior 1261, 1261 (2015), <https://journals.sagepub.com/doi/abs/10.1177/0093854815604180#articleCitationDownloadContainer>.

¹⁰⁶ *Black Lives Matter*, FACEBOOK (last visited 2018), <https://www.facebook.com/BlackLivesMatter/>.

¹⁰⁷ Blue Lives Matter is a sort of counter-movement of pro-police fundamentalism that aims to cultivate support for and of police, particularly officers who are being scrutinized for misconduct. As its name makes clear, it was created as a response to criticism of police treatment of minorities, particularly young black men. The cover image of the largest Blue Lives Matter Facebook page reads “Sometimes there’s justice. Sometimes there’s just us,” making their “us versus them” philosophy (which likely pits “Blue Lives Matter” against “Black Lives Matter” as mutually exclusive entities – which is, of course, preposterous) equally clear. See *Blue Lives Matter*, FACEBOOK (last visited 2018), <https://www.facebook.com/bluematters/>.

¹⁰⁸ Sara Kettler, ‘*Detroit*’: *The Real Story Behind the Movie*, Biography.com (Aug. 1, 2017), <https://www.biography.com/news/detroit-movie-true-story>.

¹⁰⁹ Matthew S. Schwartz, *Defense Attorney for Police in ‘Algiers Motel Shooting’: ‘Am I A Soulless Person?’*, NPR (July 23, 2017, 5:41 PM), <https://www.npr.org/2017/07/23/53888821/defense-attorney-for-police-in-algiers-motel-shooting-am-i-a-soulless-person>.

¹¹⁰ See Kettler, *supra* note 108.

¹¹¹ See Schwartz, *supra* note 109.

the black Detroit residents.”¹¹² And, while *Detroit* may act as the extreme “bad cop” juxtaposed to the unrealistic “good cop” seen in *Law and Order: Special Victim’s Unit* (and so many others), it is when these stories are told together that the American public, slowly but surely, begins to see police as they actually are – not heroes, not villains, but humans existing somewhere in between.

(2)(b) The Crumbling of a “Just World” Fantasy

When CNN asked the president and CEO of *The Philadelphia Tribune* (one of the nation’s oldest continuously published African-American newspapers) how long they had been covering cases of police violence, he responded “We’ve been in business for 130 years . . . [w]hat is being exposed nationally is something that’s been troubling us in Philadelphia as African-Americans. Yes, we have written about it. We’ve talked about it. This is the African-American experience, and for some reason non-African-Americans don’t believe it.”¹¹³ But, as the same article noted, non-African-Americans are *starting*, now, to believe that police officers often brutally and systematically target and kill unarmed black Americans, for committing petty crimes or even no crime at all.¹¹⁴ One of the reasons why informed Americans of all races are only just beginning to understand the reality of the black experience as it relates to police is because of a long-held ideal of the racial majority: the belief that this world is a just place, explained by “just world theory.”

The just world hypothesis and corresponding psychological theories aim to explain why, exactly, people have a tendency to assume that people deserve what they receive, good and bad.¹¹⁵ The theory states that as part of human nature, people have a need to believe that the world is an orderly and just place – and, in an orderly and just place, bad things do not happen to good people and each person gets only what they deserve.¹¹⁶ Just world theory technically applies in both a positive and negative context – that is, that people are just as likely to believe that

¹¹² Ricardo Lopez & Ted Johnson, *Movies, TV Shows Evolve to Reflect a Changing, More Complex View of Police*, *VARIETY* (Aug. 1, 2017, 7:00 AM), <https://variety.com/2017/film/features/police-in-movies-tv-shows-1202511299/>.

¹¹³ Elliott C. McLaughlin, *We’re Not Seeing More Police Shootings, Just More News Coverage*, CNN (April 21, 2015, 7:26 AM), <https://www.cnn.com/2015/04/20/us/police-brutality-video-social-media-attitudes/index.html>.

¹¹⁴ *Id.*

¹¹⁵ Claire Andre & Manuel Velasquez, *The Just World Theory*, *MARKKULA CENTER FOR APPLIED ETHICS AT SANTA CLARA UNIVERSITY* (Nov. 13, 2015), <https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/the-just-world-theory/>.

¹¹⁶ *Id.*

beneficiaries deserve benefits¹¹⁷ as to believe that victims deserve their suffering. But, in the context of police violence (and certain other crimes, including rape) just world theory tends to lead to victim blaming¹¹⁸ more than anything else. That is, because people need to believe that police would not indiscriminately or, to wit, discriminately target innocent people and brutalize them, they instead search for reasons why the victim deserved to be beaten or killed.

In the face of hyper-viral police violence, it seems that some members of the racial majority have only doubled-down on their adherence to the just world hypothesis; and, nowhere is this clearer than in the comments sections of many of videos depicting police violence. For example, one of the top comments (with twenty-nine likes) on video of the NYPD killing Eric Garner is from a user named Lovely, who stated that she found the video “. . . tragic and avoidable, but the victim was resisting.”¹¹⁹ Similar commentary was found on the aforementioned video of the shooting death of Alton Sterling – there, user True2Live commented that “. . . a man failed to comply with police officers even after being taxed [*sic*] twice, commanded not to move or else he will be shot, and then proceeds to CONTINUE to ignore orders and is the victim? I don’t care what anyone says but this is outrageous. He wasn’t some innocent man . . .”¹²⁰ This comment has 62 likes.¹²¹ Similar commentary can be found across the Internet, on articles and videos and truly any coverage regarding police violence, written at times not only by the YouTube commentariat, but by police themselves. One particularly egregious example of this is found in an article written by Los Angeles police veteran Sunil Dutta,

¹¹⁷ Regarding the application of just world theory in a positive context, social psychologist Melvin Lerner (who conducted significant research on just world theory), found that subjects were more likely to believe that a student who won the lottery worked harder than a student who lost the lottery. *See generally*, MELVIN J. LERNER, *THE BELIEF IN A JUST WORLD: A FUNDAMENTAL DELUSION* (Springer Science + Business Media, 1980).

¹¹⁸ John T. Jost, a scholar on just world theory, noted that while most empirical research on just world theory addresses victim blaming, it is equally likely that just world theory just as often leads to the maintenance of systematic status quos, even when those systems are inherently unequal, racist, sexist, classist, etc. He called this phenomenon “system justification,” writing that it “drives individuals to exaggerate their system’s virtues, downplay its vices, and see the societal status quo as more fair and desirable than it actually is . . . creat[ing] an inherently conservative tendency to maintain the status quo.” As applied to police violence, then, the just world theory not only leads to victim blaming, but also contributes to the maintenance of a startlingly problematic status quo regarding police and the policing of minorities in the United States. *See* John T. Jost et. al., “*The World Isn’t Fair*”: A System Justification Perspective on Social Stratification and Inequality, in 2 *APA HANDBOOK OF PERSONALITY AND SOCIAL PSYCHOLOGY* 317, 317-40 (2015).

¹¹⁹ *See* NYPD Publicly Executes Eric Garner for Illegal Cigarettes, *supra* note 62.

¹²⁰ *See* CBS NEWS, *supra* note 79.

¹²¹ *Id.*

Ph.D., who penned an opinion piece for *The Washington Post* in 2014 entitled “I’m a Cop. If You Don’t Want to Get Hurt, Don’t Challenge Me.”¹²² In the article, the author justifies police violence as the natural result of civilian disobedience – not as a response to a threat, or fear for one’s life. He writes, in pertinent part:

... here is the bottom line: if you don’t want to get shot, tased, pepper-sprayed, struck with a baton or thrown to the ground, just do what I tell you. Don’t argue with me, don’t call me names, don’t tell me that I can’t stop you, don’t say I’m a racist pig, don’t threaten that you’ll sue me and take away my badge. Don’t scream at me that you pay my salary, and don’t even *think* of aggressively walking towards me... How difficult is it to cooperate?¹²³

While this extreme victim blaming and entitlement is offensive (and frightening, because it is coming from an armed police officer), it is important to note that it comes from the very same belief in a just world that *almost all* human beings share (regardless of how they express it). Indeed, the idea that people get what they deserve is even evident in our most common children’s fables – particularly that of Santa Claus, who rewards good children with gifts and penalizes bad ones with stockings full of coal. So, while the hyper-virality of police violence is not enough to free all people from the hold of the just world fantasy, it has served to at least *loosen* that hold, in certain individuals. After all, the Rodney King beating was not the first time that police officers had unjustifiably injured or killed an unarmed black man. But it *was* the first time that Americans took to the streets en masse to protest police violence against someone like King, because it was the first time that they saw what had happened with their very own eyes. And, protests like these have only become more common in the era of hyper-viral police violence, because when people see these videos, it shows them that the world is not so just after all. And, it also begs the question: if Rodney King, Eric Garner, and Philando Castile did nothing wrong and were brutally victimized by police, what is to say that they themselves will not meet the same fate? As hyper-viral police violence continues to occur, it is possible that the just world fantasy may disintegrate entirely among the majority of Americans, forcing them

¹²² Sunil Dutta, *I’m a Cop. If You Don’t Want to Get Hurt, Don’t Challenge Me.*, *THE WASHINGTON POST* (Aug. 19, 2014), https://www.washingtonpost.com/posteverything/wp/2014/08/19/im-a-cop-if-you-dont-want-to-get-hurt-dont-challenge-me/?noredirect=on&utm_term=.ff11cc5ef3a5.

¹²³ *Id.*

to consider an unsettling truth – that Officer Friendly is no more (if he ever truly was), that Seely Booth and Olivia Benson are merely television characters, and that the police can represent a very real threat to the livelihoods and very lives of many of our friends, brothers, and sisters.

(2)(c) Risk Assessment, The Hand Formula, and Civil Liability

With this understanding in mind – that whenever the police are present, minorities of all kinds (particularly people of color, but also including women¹²⁴ and LGBT people¹²⁵) are threatened – calling the police and summoning them to any location where minorities are has become the harbinger of that threat. As such, it is only logical that informed, good-faith individuals (that is, those who genuinely do not wish to harm people of color and other minorities) incorporate an assessment of the potential risks involved each and every time they call or consider calling the police. Take for example, the Harvard-educated physician who penned an article as a psychiatric resident stating that she is afraid to call the police, even when she is doing so to ostensibly help her patients. Each time, she wrote, “. . . knowing that police interventions can be violent, and even deadly, I have to silence the screaming voice inside of me that says, ‘Don’t do it.’”¹²⁶ Then there was Chelsea Taylor, who wrote in an opinion piece for the *Huffington Post* on her fear of police – she wrote, “. . . certainly one would think that a privileged, young, white woman wouldn’t have a fear of police . . . but I do. And the more police forces become

¹²⁴ Women of color are particularly at risk for police brutality, because they “bear a double burden – carrying the weight of a weaponized skin color and the invisibility of a silenced gender.” See Cara McClellan, *The Deafening Silence Around Police Violence Against Black Women and Girls*, HUFFINGTON POST (May 5, 2018, 8:01 AM), https://www.huffingtonpost.com/entry/opinion-mcclellan-black-women-police_us_5aeb5b6be4b0ab5c3d634fd5.

¹²⁵ In an article published by Kent State University, authors quoted both a 2013 study by the Williams Institute – stating that 48% of LGBT victims of violence experienced police misconduct – and a separate 2015 survey of the transgender community specifically, which found that 58% of respondents who interacted with police who knew they were transgender experienced mistreatment. The article also discussed several instances of police brutality in relation to the LGBT community, particularly the violent raid of the Stonewall Inn which led to the Stonewall Uprisings, now widely considered to be the start of the modern LGBT rights movement. See generally, MJ Eckhouse & Saxon MJ, *Police Brutality, and Why it is an LGBTQ Issue*, KENT STATE UNIVERSITY (2017), https://www.kent.edu/sites/default/files/file/Police_Brutality.pdf.

¹²⁶ Jennifer Adaeze Okwerekwu, *My ‘Sunken Place’: Having to Call Police When I Know It Could be Deadly for My Black Patients*, STAT NEWS (May 21, 2018), <https://www.statnews.com/2018/05/21/sunken-place-police-black-patients/>.

militarized, the more I worry about abuses of power.”¹²⁷ Perhaps most damningly, in a piece for *The Baltimore Sun*, contributor Salimah Perkins discussed witnessing a street fight at a bus stop, and explained why she chose not to call the police.¹²⁸ “[I]f I called the police,” she wrote, “I had no confidence that order would be restored . . . I did think it possible, maybe even probable, that one of these guys – or more – might end up shot or beaten up without cause. That they all – those fighting and those merely there waiting for the bus – might end up in handcuffs. Or the morgue.”¹²⁹

These are but some perspectives of Americans – none of whom are black males – that recognize that calling the police carries with it a risk of the occurrence of police violence, particularly when black males are involved. And, like Perkins discussed in *The Baltimore Sun*, when this risk is recognized, the decision of whether or not to call the police becomes an exercise in basic risk assessment – and, depending on each person’s method of risk assessment, the police will either be called, or the would-be whistleblower instead will choose to walk away (like Perkins did). One of the most common methods of risk assessment is some variation on English philosopher Jeremy Bentham’s utilitarianism, often referred to colloquially as a cost-benefit analysis.¹³⁰ Generally, a cost-benefit analysis requires asking oneself, prior to making any decision, which outcome is most likely to result in “ . . . more beneficial/pleasure-causing outcomes than negative/pain-causing ones.”¹³¹ The former decision is the right one; the latter, wrong.

There are of course, variations on a basic cost-benefits analysis as a method of risk assessment, including those which focus only on the severity of a negative result, rather than the probability of it happening.¹³²

¹²⁷ Chelsea Taylor, *I Am a Law-Abiding White Woman and I Fear the Police*, HUFFINGTON POST (Sept. 1, 2017, 1:04PM), https://www.huffingtonpost.com/entry/being-afraid-of-the-police-as-a-law-abiding-white-woman_us_59a98335e4b0d0c16bb5248d.

¹²⁸ Salimah Perkins, *Law Abiding, and Afraid of the Police*, BALTIMORE SUN (Oct. 11, 2016, 9:53 AM), <https://www.baltimoresun.com/news/opinion/oped/bs-ed-salimah-perkins-20161011-story.html>.

¹²⁹ *Id.*

¹³⁰ *Utilitarianism and Cost-Benefit Analysis*, TEXAS A&M UNIVERSITY, <http://people.tamu.edu/~g-varner/bioethics/ethicaltheory/costbenefit.html> (last visited Sept. 5, 2019).

¹³¹ The Ethics Ctr., *Ethics Explainer: Consequentialism*, THE ETHICS CENTRE (Feb. 15, 2016), <http://www.ethics.org.au/on-ethics/blog/february-2016/ethics-explainer-consequentialism>.

¹³² This particular method of risk assessment was discussed at length in the context of proposed regulations of bovine growth hormone in the dairy industry in a law review article published in the *Pace Environmental Law Review*. According to the author, an appropriate balancing test here “ . . . weighs the value of and need for the product against *the magnitude of the potential risk presented by the product* . . . [i]t may be of no small importance to our children and grandchildren that we repeatedly ask ourselves the question: if we’re wrong, what will the consequences be?” (emphasis added). See David Aboulafia, *Pushing RBST*:

Judge Learned Hand's formula for the calculus of negligence, one of the most commonly applied legal theories (particularly in tort), can be viewed somewhat as a combination of these two variations in that it considers both the probability of a negative result (or loss) occurring as well as the severity of that result. The formula essentially states that if the burden (or cost) of taking precautions is less than the product of the probability of a loss and the gravity of that loss as a result of that lack of precaution, then the defendant has a duty to take said precautions.¹³³ This formula has been applied in thousands of cases to calculate tortious liability.¹³⁴ It is then an interesting exercise to briefly consider if courts could one day be inclined to apply the Hand formula (or some variation thereof) in civil lawsuits wherein victims of police violence (or their families) are suing not police officers themselves (as eventually occurred in the case of Rodney King, wherein the court ordered the officers to pay King \$3.8 million in compensation)¹³⁵ but the individuals who *called the police* to the scene in the first place.

At this point, Americans know or should know that there is at least some statistical probability (more so in some situations than others) that calling the police will result in a grave loss – as such, let us consider choosing *not* to call the police (as Ms. Perkins did)¹³⁶ to be a precaution against this potential loss. If a court were applying Hand's formula in a case such as this, whether or not the defendant who called the police was even partially civilly liable for the violence committed by the police could hinge upon whether or not the burden (or potential cost) of taking

How the Law and the Political Process Were Used to Sell Recombinant Bovine Somatotropin to America, 15 PACE ENVTL. L. REV. 603, 647, 654 (1998).

¹³³ As Judge Hand wrote, “. . . the owner's duty, as in other similar situations, to provide against resulting injuries is a function of three variables: (1) The probability that she will break away; (2) the gravity of the resulting injury, if she does; (3) the burden of adequate precautions. Possibly it serves to bring this notion into relief to state it in algebraic terms: if the probability be called P; the injury, L; and the burden, B; liability depends upon whether B is less than L multiplied by P: i.e., whether B less than PL.” See *United States v. Carroll Towing Co.*, 159 F.2d 169, 173 (2dCir. 1947).

¹³⁴ The Hand formula is so commonly utilized in tort law that it is essentially synonymous with the calculus of negligence. As Gregory C. Keating wrote for the *University of Pennsylvania Law Review*, “. . . The Hand Formula is not only too deeply embedded in negligence law to uproot; it is also unobjectionable. Indeed, the Hand Formula is one of modern negligence law's more important achievements.” See Gregory C. Keating, *Must the Hand Formula Not Be Named?*, 163 U. PA. L. REV. ONLINE 367, 368 (2015), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1150&context=penn_law_review_online.

¹³⁵ Seth Mydans, *Rodney King Is Awarded \$3.8 Million*, THE NEW YORK TIMES (Apr. 20, 1994), <https://www.nytimes.com/1994/04/20/us/rodney-king-is-awarded-3.8-million.html>.

¹³⁶ See Perkins, *supra* note 128.

precautions and choosing *not* to call the police were greater than the product of the probability that an innocent individual would get hurt, and the gravity of how severe those injuries could be. If there is an actual threat to someone's safety, and the caller is reaching out to the police officers in good faith, then the potential cost of *not* calling the police as a precaution against the potential injury of an innocent party could be immense. As such, it is not likely that the cost of taking that precaution would outweigh the probability of someone getting hurt and the gravity of that injury, and the caller would not be civilly liable for the injuries of the defendant. But, if the caller is contacting police when there is no credible safety threat (and is calling out of some other, bad faith motive) then there would be little to no burden or cost at all of failing to call the police. This would then mean that the product of the probability of an innocent party getting injured as a result of the defendant's decision to unnecessarily call the police, and the potential gravity of that injury would almost certainly be greater than that burden – thus, making the defendant civilly liable for negligence in tort for damages obtained as a result of that defendant gratuitously calling the police. This outcome may even be particularly likely when the individual calling the police is doing so to put the police in unwarranted contact with people of color, considering the significantly enhanced likelihood that an encounter between police and these individuals will end violently.¹³⁷

At the time of writing, no individual who has called the police on a person of color resulting in hyper-viral police violence has been held liable in tort for making that phone call, whether the call was made with or without a credible safety threat present. However, black urban farmer Marc Peeples did recently file a lawsuit against the three Detroit women who falsely reported to police on several occasions that he was brandishing a gun, and that he was spending time with children despite being a convicted pedophile, among other things.¹³⁸ Although these reports did not result in any physical injury due to police violence, Mr. Peeples was arrested and charged with stalking because of them – his lawsuit claims that the loss of income, attorney's fees, and emotional humiliation that he then suffered entitles him to civil damages.¹³⁹ His complaint alleges that

¹³⁷ African-Americans die at the hands of police at a rate almost 2.5 times that of whites, with 7.2 per million African-Americans killed by police, while 2.9 per million white Americans are killed by police. Native Americans are actually the racial minority that is most disproportionately killed by police, dying at the rate of 7.8 per one million people. See Maggie Fox, *Police Killings Hit People of Color Hardest, Study Finds*, NBC NEWS (May 7, 2018), <https://www.nbcnews.com/health/health-news/police-killings-hit-people-color-hardest-study-finds-n872086>.

¹³⁸ Tom Perkins, *'Gardening While Black': Lawsuit Targets White Accusers Over 'Outrageous' Claims*, THE GUARDIAN, (Mar. 8, 2019), <https://www.theguardian.com/us-news/2019/mar/08/gardening-while-black-lawsuit-marc-peeples>.

¹³⁹ *Id.*

the defendants made false reports, lied under oath, and engaged in racially motivated harassment, with the goal of “ . . . get[ting] Marc incarcerated or seriously injured by law enforcement.”¹⁴⁰ While it is of course unclear what the result of this lawsuit will be, its very existence symbolizes a push towards levying civil liability on individuals who contact the police on minorities when those calls result in some sort of harm, whether that harm takes the form of violence or not – and, these civil ramifications are particularly likely to occur when, again, there is no credible safety threat and the police are being called out of a bad-faith motive.

III. THIS IS AMERICA¹⁴¹ – HOW BAD-FAITH INDIVIDUALS GAME THE SYSTEM

It may seem strange to even entertain the potential legal ramifications of someone calling the police when there is no credible safety threat or crime occurring – after all, Americans are taught from a young age to call 911 only when there is an emergency.¹⁴² But, Mr. Peeples’ story is far from unique – rather, he is merely one of dozens of black individuals who have had the police called on them for no discernible reason at all. Many of these phone calls and scenarios have been captured on video – and, like videos of police violence, many of these too have gone hyper-viral thanks to YouTube or Facebook. The first part of this section will discuss the videos themselves as well as hypothesize that these individuals are purposely calling the police as a form of race policing, to attempt to harm innocent people of color. The second portion of this section will then discuss the potential criminal legal ramifications (as opposed to the potential civil legal ramifications briefly discussed in

¹⁴⁰ *Id.*

¹⁴¹ “This is America” refers to a popular song by rapper and actor Donald Glover, also known as Childish Gambino. The song and its corresponding music video (which has 456 million views on YouTube) are deeply symbolic representations of many facets of the black experience in America, including references to the relationship between black men and police. As Spencer Kornhaber wrote for *The Atlantic*, “Glover knew what he was getting into with the name ‘This is America’ America is a place where black people are chased and gunned down.” See Spencer Kornhaber, *Donald Glover is Watching You Watch Him*, *THE ATLANTIC* (May 7, 2018), <https://www.theatlantic.com/entertainment/archive/2018/05/donald-glover-this-is-america-childish-gambino/559805/>. It is the first rap song to ever win a Grammy award for Record of the Year. See Tatiana Cirisano, *Childish Gambino’s ‘This is America’ Becomes First Rap Song to Win Record of the Year Grammy*, *BILLBOARD* (Feb. 11, 2019), <https://www.billboard.com/articles/news/grammys/8497638/childish-gambino-this-is-america-wins-record-of-the-year-grammys>.

¹⁴² According to 911.gov, “Since the introduction of 911 services nearly 50 years ago, public education campaigns have been successful in teaching children and adults to call 911 in an emergency.” See, *Public Education*, 911.gov, https://www.911.gov/issue_publiceducation.html.

the previous section) of this practice, based largely on innocent agent theory. Finally, the third segment of this section will discuss the chilling effect that this phenomenon has had on the legitimacy of law enforcement throughout the United States, ultimately making an argument for the independent regulation of police forces to reduce the prevalence of police violence, thus revitalizing trust in this vital American institution.

(1) From Trigger Happy to Dial Happy

On April 29, 2018, two black men were having a barbeque in a park in Oakland, California.¹⁴³ A white woman named Jennifer Schulte witnessed the barbeque, and apparently believed that the men were using a portable charcoal grill in an area of the park that only permitted portable non-charcoal grills – and so, she called the police.¹⁴⁴ The wife of one of the men began to film Schulte, who told 911 dispatchers that she was afraid the coals from the barbeque would “burn more children” causing her to have to “pay more taxes” as a result.¹⁴⁵ The black men were at no point threatening or violent towards Schulte, but this did not stop her from calling the police multiple times stating that she was “really scared,” and begging the police to “come quick!”¹⁴⁶ Despite some confusion on behalf of the 911 dispatchers, eventually the Oakland police were sent to investigate the situation; and while the situation did not end violently (nor did it even end in a citation for either of the two men), both grillers were detained and questioned by police for more than an hour before being released.¹⁴⁷ The footage of Schulte calling 911 went viral shortly after it was uploaded to social media and has over four million views on YouTube¹⁴⁸ – upon seeing the footage, viewers almost immediately began calling Schulte “BBQ Becky”, launching her into Internet infamy.¹⁴⁹

Almost immediately after the footage of Schulte went viral, it seemed that Internet channels were flooded with copycat videos of mostly

¹⁴³ Hilary Hanson, *Listen to Full 911 Audio of ‘BBQ Becky’ Calling Cops on Black Men Grilling*, *HUFFINGTON POST* (Sept. 2, 2018, 1:56 PM), https://www.huffingtonpost.com/entry/bbq-becky-911-calls-grill_us_5b8c0f07e4b0162f4724a74c.

¹⁴⁴ *Id.*

¹⁴⁵ Christina Zhao, ‘BBQ Becky’, *White Woman Who Called Cops on Black BBQ, 911 Audio Released: ‘I’m Really Scared! Come Quick!’*, *NEWSWEEK* (Sept. 4, 2018, 5:42 AM), <https://www.newsweek.com/bbq-becky-white-woman-who-called-cops-black-bbq-911-audio-released-im-really-1103057>.

¹⁴⁶ *Id.*

¹⁴⁷ See Hanson, *supra* note 143.

¹⁴⁸ Michelle Dione Snider, *White Woman Called Out For Racially Targeting Black Men Having BBQ in Oakland*, *YouTube* (Apr. 29, 2018), https://www.youtube.com/watch?v=Fh9D_PUe7QI.

¹⁴⁹ See Zhao, *supra* note 145.

white women¹⁵⁰ calling the police on people of color for various purported (harmless) infractions. Most of these individuals were given nicknames and turned into Internet memes,¹⁵¹ with videos of them contacting the police receiving thousands of views.¹⁵² There was for example, Alison Ettel, who was captured on camera calling the police on an eight-year-old black girl who was selling water bottles without a permit on a sidewalk in San Francisco in June 2018.¹⁵³ Dubbed “Permit Patty” by Internet viewers,

¹⁵⁰ It is worth noting that all of the most infamous examples of white individuals calling the police on black people featured female callers. This may be because, according to data from the Cato Institute, women of all races are slightly more likely than men to “definitely report a crime,” with white women being particularly likely to do so. The poll found that 78% of white people would “definitely report a crime” as opposed to 54% of African-American respondents and 57% of Hispanic individuals. It also found that 74% of women would “definitely report a crime” as opposed to 70% of men. This does not mean, of course, that white men – or men in general – do not play a role in this issue; but it may explain (at least partially) why all of the most publicized incidents of white individuals calling the police on black people for no discernible reason featured female callers. See Emily Ekins, *Policing in America: Understanding Public Attitudes Toward the Police. Results from a National Survey*, THE CATO INSTITUTE (Dec. 7, 2016), <https://www.cato.org/survey-reports/policing-america>.

¹⁵¹ Turning individuals like Jennifer Schulte and Alison Ettel into memes originally served as a way of quickly spreading footage of them throughout the Internet, in a quick and catchy way. Now, though, giving white people who call the police on black individuals “meme” nicknames serves other purposes as well – it encourages the use of humor as a coping mechanism. On a positive note, this phenomenon of “meme-ing the threat” could reduce trauma experienced by people of color in seeing potentially dangerous encounters between other people of color and police for no discernible reason. However, using memes and “cutesy” nicknames as a method of coping also encourages a culture and psychology of desensitization which, some critics argue, undermines the gravity of what these calls are doing to people of color, as well as the severity of the potential results of these calls for people of color. See Antonia Noori Farzan, *BBQ Becky, Permit Patty and Cornerstore Caroline: Too ‘Cutesy’ for Those White Women Calling Police on Black People?*, WASHINGTON POST (Oct. 19, 2018, 6:08 AM), <https://www.google.com/amp/s/www.washingtonpost.com/amphtml/news/morning-mix/wp/2018/10/19/bbq-becky-permit-patty-and-cornerstore-caroline-too-cutesy-for-those-white-women-calling-cops-on-blacks/>.

¹⁵² These videos, like the hyper-viral videos of police violence, may be difficult for people of color to view. As Paul Butler wrote in an opinion column for USA Today, “. . . I don’t watch the videos. I like to at least pretend that I am free, while all those ubiquitous cellphones demonstrate that I’m not . . . So when a “breathing while black” video pops up, for my mental health and blood pressure, I don’t take the clickbait. Not this brother. Not this day. Not over some mess that my people did not create and do not deserve.” See Paul Butler, *‘Breathing While Black’ Videos, Smollett Case Have Something In Common – Public Condemnation of Black Men*, USA TODAY (March 28, 2019, 7:24 PM) <https://www.usatoday.com/story/opinion/policing/2019/03/28/jussie-smollett-colorado-breathing-while-black-policing-the-usa/3240315002/>.

¹⁵³ Jessica Campisi et. al., *After Internet Mockery, ‘Permit Patty’ Resigns as CEO of Cannabis-Products Company*, CNN (June 26, 2018, 10:47 PM) <https://www.cnn.com/2018/06/25/us/permit-patty-san-francisco-trnd/index.html>.

Ettel eventually resigned from her position as CEO of an organization that (ironically) sells cannabis-infused medical products as a result of backlash from the video, which has seven million views on Twitter alone.¹⁵⁴ An unidentified white woman dubbed “Crosswalk Cathy” was filmed calling the police on a black couple for parking too close to the crosswalk in October 2018 – that video has been viewed over 100,000 times.¹⁵⁵ That same month, an attendant at a teen soccer game called the police on a black father who was instructing his son from the sidelines in an alleged violation of sport regulations; she phoned the cops from a golf cart, leading to her Internet nickname of “Golfcart Gail.”¹⁵⁶ Also in that same month, Teresa Klein – now known as “Cornerstore Caroline” – allegedly called the police after accusing a nine-year-old black boy of grabbing her backside in a New York City bodega.¹⁵⁷ A video of her apparent phone call with the NYPD has 8.3 million views on Facebook.¹⁵⁸ This instance is particularly disturbing because of its similarity to the circumstances surrounding the murder of Emmett Till, a fourteen-year-old black boy who was brutally beaten and murdered after he supposedly whistled at a white woman named Carolyn Bryant in a Mississippi shop in 1955. Over sixty years later, it was revealed that Bryant had recanted her testimony, admitting that Till had never harassed or threatened her.¹⁵⁹

From Carolyn Bryant to Cornerstore Caroline (and everyone in between) there is a significant history in the United States of white people calling the police on innocent people of color. There are at least two potential explanations for why this happens, and particularly for why there has seemingly been an uptick in this behavior recently. The first would be

¹⁵⁴ *Id.*

¹⁵⁵ Maria Perez, ‘Crosswalk Cathy’: White Woman Allegedly Calls Cops on Black Couple for Parking Job, *NEWSWEEK* (Oct. 31, 2018, 3:24 PM), <https://www.newsweek.com/crosswalk-cathy-white-woman-cops-black-couple-parking-job-1195704>.

¹⁵⁶ Elisha Fieldstadt, *White Woman Dubbed ‘Golfcart Gail’ Calls Police on Black Father at Soccer Game*, NBC News (Oct. 17, 2018), <https://www.nbcnews.com/news/us-news/white-woman-dubbed-golfcart-gail-calls-police-black-father-soccer-n921121>.

¹⁵⁷ Enjoli Francis and Bill Hutchinson, ‘I Don’t Forgive This Woman, And She Needs Help’: Black Child Wrongly Accused of Grabbing ‘Cornerstore Caroline’, ABC News (Oct. 16, 2018), <https://abcnews.go.com/US/white-woman-apologizes-alleging-black-child-assaulted-york/story?id=58505763>.

¹⁵⁸ It is important to emphasize that the footage only shows an apparent phone call with the NYPD, as NYPD spokespeople have stated that “. . . there is no proof she ever actually called 911 to report the incident.” See Gina Martinez, *Woman Dubbed ‘Cornerstore Caroline’ Faces Backlash After Falsely Accusing a 9-Year-Old Boy of Sexual Assault*, *Time* (Oct. 16, 2018), <http://time.com/5426067/cornerstore-caroline-backlash-sexual-assault-boy/>.

¹⁵⁹ *Emmett Till is Murdered*, *History* (Aug. 21, 2018), <https://www.history.com/this-day-in-history/the-death-of-emmett-till>.

that white Americans are conditioned to fear and do actually fear¹⁶⁰ people of color and, because of that subjective fear (as objectively unreasonable as it may be) they feel it necessary to call the police essentially whenever they see a black person in public, using perceived slights as excuses to justify their fear and corresponding recklessness in calling the police, knowing that it could lead to the injury or death of an innocent person of color. This fear-focused theory may be supported by exclamations of fear by these white individuals, including “BBQ Becky.”¹⁶¹ The other explanation, however, is that these individuals calling the police are not *actually* afraid at all – rather, they are consciously calling the police on people of color knowing that there is some possibility that these interactions will end in violence, injury, or death. And if this is true, then these individuals are gaming the system and utilizing law enforcement as their own personal race police, thereby attempting to harm people of color through the police as opposed to harming them directly, themselves.

(2) *Innocent Agent Theory and Criminal Liability*

Contacting the police regarding a person of color when there is no safety threat is a method of attempted police-assisted harm. With this in mind – that this action constitutes an attempted harm – it is interesting to consider what, if any, criminal theories could be used to ensure that individuals who do this are held properly liable. There are already, in many states, laws against the misuse of 911, although they carry varying penalties and may not apply in all situations. In California, for example, a person who calls 911 “. . . with the intent to annoy or harass another person is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000) by imprisonment in a county jail for not more than six months, or by both the fine and imprisonment.”¹⁶² If convicted of violating this statute, the convicted individual must also pay all reasonable costs incurred by the unnecessary deployment of law enforcement officials.¹⁶³ However, the specific intent required in the statute (that the call must be made with the intent of annoying or harassing another person) can only be established via proof of “repeated calls or

¹⁶⁰ Regarding white fear of black men in particular, National Public Radio’s Michel Martin said that “It’s an open secret among African-American men and boys that people are often afraid of them.” This fear affects interactions between black men and law enforcement, among other things. See Michel Martin, *Fear of the Black Man: How Racial Bias Could Affect Crime, Labor Rates*, National Public Radio (March 30, 2015), <https://www.npr.org/2015/03/30/396405061/fear-of-the-black-man-how-racial-bias-could-affect-crime-labor-rates>.

¹⁶¹ See Zhao, *supra* at footnote 145.

¹⁶² Calif. Stat. § 653x(a) (2016).

¹⁶³ Calif. Stat. § 653x(c) (2016).

communications over a period of time, however short, that are unreasonable under the circumstances.”¹⁶⁴ This could mean that Jennifer Schulte (“BBQ Becky”) who contacted police on black men having a barbeque in California could be prosecuted under this statute, because she called multiple times;¹⁶⁵ however, Alison Ettel (“Permit Patty”) who called police on an eight-year-old black girl selling water on the street in California likely could not be, because she called police only once.¹⁶⁶ The California statute illustrates just how limited 911 misuse statutes can be in addressing the particular issue of white individuals calling the police in an attempt to harm people of color. And, although revolutionary laws making calling 911 on an innocent person of color a hate crime have been proposed, no such law attacking the issue to this level has yet been passed.¹⁶⁷ As such, it is an interesting exercise to attempt to find alternate methods of criminal liability (outside the boundaries of traditional and proposed misuse of 911 statutes) for this action via theoretical application of the innocent agent theory.

Innocent agent theory (also known as the innocent instrumentality doctrine) has been applied in the past in cases of police violence. For example, in *Bailey v. Commonwealth*, defendant Bailey was arguing with his neighbor, Gordon Murdock over their citizen band radios – both were intoxicated, and Murdock was “legally blind”, which Bailey knew.¹⁶⁸ Specifically to agitate Murdock, Bailey implied during the argument that both Murdock himself and his hero, General George Patton, were homosexuals and then baited him until he was waiting on his porch with a handgun for “Bailey” to come and fight him in person.¹⁶⁹ Instead of going to Murdock’s home, however, Bailey instead made two anonymous phone calls to the police, reporting that there was a man at Murdock’s address “waving a gun around.”¹⁷⁰ Three uniformed officers were dispatched to

¹⁶⁴ Calif. Stat. § 653x(b) (2016).

¹⁶⁵ See Zhao, *supra* at footnote 145.

¹⁶⁶ See Campisi, *supra* at footnote 153.

¹⁶⁷ Then-New York State Senator Jesse Hamilton was speaking with voters in his Brooklyn district prior to the 2018 midterm election when an unidentified woman called the cops on him for no reason. One week later, Mr. Hamilton held a press conference and announced his intention to introduce a bill that would criminalize 911 calls made for no discernible reason against people of color. “Living while black is not a crime,” he said. “But, making a false report, especially motivated by hate, should be. Our laws should recognize that false reports with hateful intent can have deadly consequences.” The law was never passed, as Mr. Hamilton lost his Senate election approximately one month later. See Dominique Mosbergen, *NY Lawmaker Wants to Make Calling Cops on Innocent Black People a Hate Crime*, Huffington Post (Aug. 2018), https://www.huffingtonpost.com/entry/911-discrimination-law-jesse-hamilton-new-york_us_5b796dbfe4b0a5b1febc2632.

¹⁶⁸ *Bailey v. Commonwealth*, 329 Va. S.E.2d 37, 38 (1985).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 39.

Murdock's home – he opened fire, thinking the officer speaking to him was Bailey.¹⁷¹ The officers then justifiably and legally opened fire in response, killing Murdock.¹⁷² Bailey was convicted of involuntary manslaughter as a principal in the first degree, despite not being an immediate perpetrator of Murdock's homicide, because he effected a criminal act through an innocent agent: the police.¹⁷³ The court wrote that, "What is relevant is whether Bailey undertook to cause Murdock harm and used the police to accomplish that purpose, a question which we believe must be answered affirmatively . . . from a legal standpoint, it is clear that, for Bailey's mischievous purpose, the police officers who went to Murdock's home and confronted him were acting as Bailey's innocent or unwitting agents."¹⁷⁴ Furthermore, the court concluded that because the intervening act (consisting, here, of Murdock opening fire on the police first) was reasonably foreseeable, there was no break in the chain of causation between Bailey's original act of negligence and Murdock's death.¹⁷⁵

While the *Bailey* case is a few decades old – and, perhaps ages itself via its mention of citizen band radios – the underlying innocent instrumentality doctrine discussed in this case has been used to levy criminal responsibility on individuals who call the police for no ostensible reason under more modern circumstances as well. "Swatting" generally refers to the practice of making false reports to police and 911 dispatchers in order to embarrass and inconvenience a target, by having the SWAT team called on them.¹⁷⁶ It has gained traction among online gamers, who use it as a prank and a method of revenge, as they swat fellow gamers and watch the mayhem of a police raid unfold via live stream.¹⁷⁷ While it may seem inane, it is fairly common – indeed, a ten-minute long video of the "top 10 gamers swatted on live stream" has over 27 million views on YouTube.¹⁷⁸

This "prank" clearly can and does have deadly consequences. On December 28, 2017, two men – Casey Viner and Shane Gaskill – got into

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.* at 40.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 41 (citing *Delawder v. Commonwealth*, 214 Va. 55, 58, 196 S.E.2d 913, 915 (1973))

¹⁷⁶ Nick Wingfield, *Online 'Swatting' Becomes a Hazard for Popular Video Gamers and Police Responders*, New York Times (Mar. 20, 2015), <https://www.nytimes.com/2015/03/21/technology/online-swatting-becomes-a-hazard-for-popular-video-gamers-and-police-responders.html>.

¹⁷⁷ *Id.*

¹⁷⁸ *Top 10 Gamers Swatted on Live Stream*, SPACEBOUND – YOUTUBE (Jan. 21, 2016), <https://www.youtube.com/watch?v=gedVHbgl7c>.

an argument while playing an online video game, in the course of which Mr. Viner enlisted a third man, Tyler Barriss, to swat Mr. Gaskill.¹⁷⁹ Upon learning of the potential swatting, Mr. Gaskill provided Mr. Barriss with a false address for his home; Mr. Barriss then used that address when he called Wichita police, and told them that he had killed his father and was holding two family members at gunpoint.¹⁸⁰ Police officers arrived at the address and shot and killed one of its inhabitants, Andrew Finch, a 28-year-old father of two who was wholly unaware that the swatting call had been made.¹⁸¹ Mr. Barriss pleaded guilty to cyberstalking, conspiracy, and making a false report resulting in a death, and was sentenced to 20 years in prison.¹⁸² Mr. Viner pleaded guilty to charges of conspiracy and obstruction of justice, and likely will serve two years of probation,¹⁸³ and Mr. Gaskill is still awaiting trial.¹⁸⁴ The police officer who shot Mr. Finch is not being charged, because the officer believed Mr. Finch was reaching for a gun when he was shot (he may have been reaching for a cell phone).¹⁸⁵ That is, prosecutors essentially found that the officer acted as an innocent instrumentality, and that it was Mr. Barriss's bad-faith, unnecessary 911 call that was immediately responsible for Mr. Finch's death rather than the officer's actions.¹⁸⁶ Pragmatically, there are few differences between the reckless disregard for the safety of others exhibited when bad-faith individuals call the regular police on a minority versus when they call the SWAT team on a non-minority individual for no reason. It is difficult to see why, legally, there should be much of a difference either.

Following the legal theories applied in the above "swatting" case as well as the *Bailey* case, it is wholly possible that innocent agent theory could be applied to levy criminal responsibility against bad-faith callers in

¹⁷⁹ Matt Stevens & Andrew R. Chow, *Man Pleads Guilty to 'Swatting' Hoax That Resulted in a Fatal Shooting*, New York Times (Nov. 13, 2018), <https://www.nytimes.com/2018/11/13/us/barriss-swatting-wichita.html>.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Doha Madani, *Serial 'Swatter' Tyler Barriss Sentenced to 20 Years for Death of Kansas Man Shot By Police*, NBC News (March 29, 2019), <https://www.nbcnews.com/news/us-news/serial-swatter-tyler-barriss-sentenced-20-years-death-kansas-man-n978291>.

¹⁸³ Andrew Craft, *Teen Gamer Pleads Guilty in Deadly Kansas 'Swatting' Case*, Fox News (April 3, 2019), <https://www.foxnews.com/us/teen-gamer-pleads-guilty-in-deadly-kansas-swatting-case>

¹⁸⁴ Niraj Chokshi, *3 Men Face Federal Charges in Fatal 'Swatting' Prank*, New York Times (May 24, 2018), <https://www.nytimes.com/2018/05/24/us/gamers-swatting-charges.html?module=inline>.

¹⁸⁵ District Attorney Marc Bennett, *Report on the Officer-Involved Shooting Death of Andrew Finch* (April 12, 2018), <https://www.sedgwickcounty.org/media/39521/mccormick-shooting-finch-final-report.pdf>.

¹⁸⁶ *Id.*

instances of unnecessary phone calls to police ending in violence. Consider, for example, if Jennifer Schulte's multiple phone calls to police on innocent black men grilling in a park had led to dispatching officers mistakenly believing one had reached for a weapon, and lawfully killing him. Applying the rationale of *Bailey*, it is possible that Schulte could be held criminally liable for undertaking to cause these men harm, and utilizing the police as innocent agents to accomplish this goal. And, particularly considering that it is well-known that there are disproportionate levels of police violence against innocent, unarmed minorities, it is hardly unforeseeable that something would happen in an interaction between police officers and black men to make the officers believe they were justified in resorting to violence.¹⁸⁷ Of course, criminal laws in the United States can vary based on jurisdiction, but as a general matter it is hardly unreasonable to consider innocent agent theory as the most viable means of ensuring that bad-faith individuals contacting the police on minorities for no discernible reason are held properly criminally liable if – and when – these interactions do eventually end violently.

(3) The Chilling Effect – And What (If Anything) Can Be Done About It

It is important to note that even if the above theory of criminal liability were to be applied in instances wherein unnecessary phone calls to the police lead to violence, it would be nearly impossible to apply criminal legal liability for the mere frivolous calling of police as the inchoate¹⁸⁸ crime of perhaps attempted murder or assault¹⁸⁹ through an innocent instrumentality. However, the proliferation of this practice (particularly when combined with the enhanced accessibility of hyper-

¹⁸⁷ Regarding the near certitude of police violence eventually occurring when white people unnecessarily call the police on black individuals, Monique Judge wrote “Let’s be honest – the police have been weaponized against black people, and white people will use the cops as their trump card (pun intended) when things aren’t going their way. Despite the fact that calling the police on black people can result in black death, white people continue to do this simply because they can.” See Monique Judge, *Stop Calling the Police on Black People Just Because You’re Annoyed; You’re Gonna Get Someone Killed*, The Root (April 23, 2018), <https://www.theroot.com/stop-calling-the-police-on-black-people-just-because-yo-1825486062>.

¹⁸⁸ The word “inchoate” generally refers to incomplete crimes, or acts taken toward committing a crime that constitute indirect participation in that crime. The most common inchoate crime is criminal attempt. See, *Inchoate/Incomplete Crimes*, Justia (2019), <https://www.justia.com/criminal/offenses/inchoate-crimes/>.

¹⁸⁹ Assault is sometimes considered an inchoate crime as, at common law, it generally referred to attempted battery. However, the Model Penal Code merges assault and battery, thus making assault less of an inchoate crime and more of a completed conduct crime. See Model Penal Code § 211.1.

viral videos of police violence) is significantly and negatively impacting the relationship between civilians and law enforcement. This impact can be summarily described as a chilling effect,¹⁹⁰ whereby the legitimate usage of emergency services and police is being suppressed due to fear of consequences as a form of over-correction while, at the same time, there is an under-correction of sorts occurring wherein bad-faith individuals are taking advantage of fear of law enforcement and enhancing it by unnecessarily calling the police on people of color.

Both this under-correction and over-correction (as well as the overall chilling effect) are incredibly detrimental not only because they reduce overall trust in police, but also because of the potential effects that this reduction of trust can have on society. If good-faith people are afraid to call the police when they see crimes, it is possible that crime itself will increase. And, if people do not trust the police to ensure people who commit crimes are properly arrested, it is also possible that vigilantism will increase as citizens begin to take justice into their own hands.¹⁹¹ Both of these consequences then, amount to more than just a projected, amorphous decline in American trust of police officers and police as an institution – rather, they pose true threats to the safety of the American public, which is clearly undesirable. The question now, becomes what exactly can be done to combat this chilling effect, and mitigate its collateral consequences. While this paper earlier proposed various methods of applying civil and criminal liability for individuals who make unnecessary phone calls to the police, those may be unlikely to come to fruition (with civil liability probably even less likely to be successfully applied than criminal liability, perhaps counter-intuitively). However, even if some type of sanction for individuals who make these frivolous calls were to become commonplace, that would not be sufficient to fully combat the overall chilling effect – because these individuals and their actions are a symptom, and not a cause, of this issue. These calls are being made to harm people of color in some way – whether that harm solely takes the form of striking fear¹⁹² into the heart of a person of color when

¹⁹⁰ *Chilling Effect Law and Legal Definition*, US Legal (2016), <https://definitions.uslegal.com/c/chilling-effect/>.

¹⁹¹ A revitalization of vigilantism as a result of a lack of trust in traditional law enforcement may not be as far-fetched as it sounds. As Gary T. Marx and Dane Archer wrote, “In earlier periods when people felt that there was too much crime, that their persons or property were in danger, that cherished traditions and values were being threatened, and that regular law enforcement officials were not coping with the problem, vigilante-type efforts frequently emerged . . . [t]he present era is no exception.” See Gary T. Marx and Dane Archer, *Citizen Involvement in the Law Enforcement Process: The Case of Community Police Patrols*, 15 *Am. Behavioral Scientist* 52 (1971), <http://web.mit.edu/gtmarx/www/citizens.html>.

¹⁹² Although the police never arrived, Alison Ettel – also known as “Permit Patty” – nonetheless scared the child that she called the police on for selling water on a San

they learn that police are on their way, or whether it is a more insidious attempt at kickstarting police violence. But those physical, mental, and social harms only occur because police violence is so prevalent in the United States – if this threat were to dissipate, the misuse of police would as well.

Reducing the prevalence of police violence and improving relationships between minorities and police will require a multi-systemic approach that is devoted to understanding and managing the various historical and current circumstances that have enforced and reinforced racist policing in the United States.¹⁹³ This could include, as this paper has touched on: a reversion away from broken windows policing and towards community policing;¹⁹⁴ a reduction of reliance on “tough on crime” policies that disproportionately impact minorities; and an increased awareness of the trauma people of color have experienced in viewing hyper-viral videos of police violence, and corresponding trauma-informed care and policing,¹⁹⁵ among other things. Perhaps most importantly though, any plan to reduce police violence (thus to improve relationships, even marginally, between minority individuals and police) must include

Francisco street. The child, Jordan Austin, stated “I did not want to see police because I was scared.” Her mom elaborated, noting that “Calling the police on any person of color these days is an issue. They come, they shoot first and they ask questions later. Knowing that and knowing everything that’s going on in the media, why would you call the police on a child of color?” See Karma Allen, *‘Hateful’ Woman Threatened to Call Police on 8-Year-Old for Selling Water, Mom Says*, ABC News (June 25, 2018), <https://abcnews.go.com/GMA/News/mom-hateful-woman-threatened-call-police-year-selling/story?id=56134800>.

¹⁹³ Ideally the solution to improving the relationship between police and minorities would be to end racism in the United States – this is unrealistic for many reasons. As Professor Paul Butler wrote, “Given the central role race has played in shaping allocation of societal resources, addressing racial injustice is not merely a matter of clearing up misconceptions through dialogue or adopting modest reforms.” As such, this section does not purport to propose solutions to racism, merely to ameliorating relationships between police and people of color. See PAUL BUTLER, *CHOKEHOLD – POLICING BLACK MEN* 185 (2017).

¹⁹⁴ Community policing has been found to enhance police trust among black adults, thus improving the minority-police relationship. A Quinnipiac poll, in fact, found that 67% of black Americans disapprove of the way that “police in the U.S. are doing their job,” while 68% of black Americans actually approve of the way “police in your community are doing their job.” See, *Big Racial Gap As Americans Say No to Anthem Protests, Quinnipiac University National Poll Finds; Blacks Disapprove of Cops, But Like Cops They Know*, Quinnipiac University Polls (Oct. 11, 2016), <https://poll.qu.edu/national/release-detail?ReleaseID=2387>.

¹⁹⁵ According to Elizabeth Wexler, LCSW-C, trauma-informed policing benefits both citizens and police, by increasing cooperation and reducing trauma during interactions, thus leading to better outcomes for all involved. See Elizabeth Wexler, *Trauma-Informed Policing: A Special Set of Tools for Law Enforcement*, Behavioral Health Administration of Maryland, <https://bha.health.maryland.gov/Documents/Trauma-Informed%20Policing%20-%20Betsy%20Wexler.pdf>.

the formation of a national, independent regulatory board – like the already-existing Civilian Complaint Review Board in New York City.¹⁹⁶ This board would exist to not only investigate instances of police violence, but also to oversee police diversity and inclusion training as a preventative measure. It must have the authority to file departmental charges, as the Civilian Complaint Review Board does (and did in the case of the death of Eric Garner),¹⁹⁷ but should be nationwide to ensure the even application of sanctions. With this board in place, even if there is insufficient evidence for an officer who committed an unjustified act of violence to be charged criminally (or even to be held civilly liable) that officer can be properly punished. This could then reduce the prevalence of police violence, as officers will know that those actions have consequences, thus reinvigorating trust in the police.

IV. CONCLUSION

With each hyper-viral video of police violence that is posted on the Internet, the two paradigm shifts discussed in this paper – regarding the deteriorating relationship between good-faith people and police, and the rising abuse and misuse of police services by bad-faith individuals looking to game the system – become more pronounced. These paradigm shifts have already led to significant social harm, including the delegitimization of law enforcement and a chilling effect as it relates to the utilization of law enforcement services. The police are one of the most vital institutions in American society; and it is not too late to intervene and ensure that our relationships with police change for the better. Let us refuse to allow one more life to be taken by police without continuing to demand this change; and let us ensure now that those changes are made before it is too late, and before all of our relationships – with police, and with each other – are broken beyond repair.

¹⁹⁶ *Civilian Complaint Review Board*, NYC.gov (2018), <https://www1.nyc.gov/site/ccrb/index.page>.

¹⁹⁷ Benjamin Mueller, *Police Move to Discipline Officer Involved in Eric Garner's Death*, New York Times (July 19, 2018), <https://www.nytimes.com/2018/07/19/nyregion/eric-garner-nyc-police.html>.